FILE COPY

IN THE

Supreme Court of the United States

October Term, 1960.

No. 449

BOARD OF PUBLIC EDUCATION,
SCHOOL DISTRICT OF PHILADELPHIA,

Petitioner,

v.

GOLDIE WATSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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September 28, 1960.

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v.

GOLDIE WATSON,
Respondent.

TITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Board of Public Education, School District of Philahia prays that a Writ of Certiorari issue to review the gment of the Supreme Court of Pennsylvania entered in above entitled case on June 30, 1960.

CITATIONS TO OPINIONS BELOW.

The opinion of the Superintendent of Public Instruc- of Pennsylvania is unreported and is printed in Apix B hereto, *infra*, pp. 2a-21a. The opinion of the rt of Common Pleas of Philadelphia County is unred and is printed in Appendix B hereto, *infra*, pp. 22a- The opinion of the Supreme Court of Pennsylvania, ther with dissenting opinions, is reported in 401 Pa. 62, A. 2d 60 and is printed in Appendix B hereto, *infra*, 38a-64a.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania was entered on June 30, 1960. The jurisdiction of this court is invoked under 28 U. S. C. Section 1257(3). The federal constitutional question of whether respondent's dismissal from employment violated the due process clause of the Fourteenth Amendment was first raised by the respondent in the brief and argument on her appeal to the Court of Common Pleas of Philadelphia County from the decision of the Superintendent of Public Instruction of Pennsylvania. The Court of Common Pleas determined the constitutional question adversely to respondent and in favor of the petitioner. Respondent thereafter raised this constitutional question in her brief and argument on her appeal to the Supreme Court of Pennsylvania and that court determined the issue in favor of respondent, holding that her dismissal from employment was in violation of the due process clause of the Fourteenth Amendment.

QUESTION PRESENTED.

1. Does the dismissal of a public school teacher on the ground of incompetency for her conduct in refusing to answer questions concerning her former subversive affiliations in a public hearing before a Committee of the Congress of the United States with a claim that the Committee had no right under the First Amendment to ask her such questions, violate the due process clause of the Fourteenth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional provisions involved are the First and Fourteenth Amendments of the Constitution of the United States. They are printed in Appendix A, *infra*, p. 1a.

The statutory provision involved is Article XI, Section 1122 of the Public School Code of Pennsylvania, Act of March 10, 1949, P. L. 30, 24 Purdon's Penna. Statutes Ann. Section 11-1122. It is printed in Appendix A, *infra*, p. 1a.

STATEMENT.

The respondent was dismissed on June 29, 1954 from position as a public school teacher in Philadelphia, by Board of Public Education of the School District of adelphia, following a public hearing before the Board. Superintendent of Public Instruction of the Common-lth affirmed her dismissal. On appeal to the Court of mon Pleas of Philadelphia County, that court affirmed order of the Superintendent of Public Instruction and eld the dismissal.

On further appeal, the Supreme Court of Pennsylvania ersed the decision below and held that the dismissal of pondent violated the due process clause of the Fourteenth endment.

The respondent had been employed as a teacher in the adelphia public school system in 1931. She appeared, suant to subpoena, on February 17, 1954, before a Sub-mittee of the Un-American Activities Committee of the se of Representatives, Congress of the United States. Subcommittee was holding hearings to investigate the nt of Communist infiltration in education. At the time respondent appeared, the Subcommittee was investigat-the extent of Communist infiltration in the Philadelphia lic school system.

She gave the Subcommittee her name, address and a mé of her schooling and employment record as a teacher. was informed by counsel for the Committee that a Mrs. othy Funn had testified before the Committee that she known respondent as a member of the Communist Party. pondent was then asked whether she had ever been a nber of the Communist Party. She refused to answer the stion, stating that she would not answer any other ques-s about membership in organizations, associations, so-ies, people she had met, or anything else. She specifically ined to take advantage of the Fifth Amendment. When

e question was repeated by counsel for the Committee, spondent said that she would not answer it, and that it was violation of her constitutional rights "for you to bring me re and attempt to compel me to answer questions about my sociations, memberships, conferences, or speeches".

She was then asked the further question whether she d ever attended a Communist school in New York State a school for instruction of Communist teachers. She ated, "I will not answer", and "I refuse to answer". She as asked whether she had ever attended any Communist struction school at any place. She refused to answer, ecifically on the basis of the First Amendment to the onstitution.

She was asked the further question as to whether she as active in work with the National Negro Congress, a ommunist front organization, and refused to answer, rely- g specifically on the First Amendment.

She was informed by Congressman Scherer that she as in contempt of Congress. She said that she had been vised by counsel of the risks and dangers of her position, at she assumed these risks and dangers because the posi- on was sacred to her, that she held her rights sacred, and ould not permit the Committee to compel her to violate em. In response to the question as to whether she had ken the Loyalty Oath, she stated that it was a matter of blic record that she had taken it. The final question asked r was whether she was a member of the Communist Party the time that she took the Loyalty Oath. She refused to swer the question on the basis of the First Amendment . 17a).

Respondent was charged by the Board of Public Educa- n with incompetency, based on her refusal to answer the estions of the Congressional Committee and her conduct fore the Committee, as showing a lack of professional nesses to be a teacher. The charge was brought under the nnsylvania Public School Code of 1949, P. L. 30, Section 22, 24 Purdon's Pa. Statutes Ann. Section 11-1122.

Respondent was accorded a hearing before the Board of
lic Education on the charge, was represented by counsel
ne hearing and testified in her defense that she believed
the Committee was "an inquisition".

After the hearing before the Board, the Board found
the charge of incompetency was sustained and ordered
respondent dismissed. The Superintendent of Public
ruction of the Commonwealth and the Court of Common
as of Philadelphia County on further appeal, affirmed
order of dismissal.

The Supreme Court of Pennsylvania reversed the deci-
and ordered the reinstatement of the respondent in a
r-to-three decision. The court held that the refusal to
wer a Congressional Committee was not a lawful ground
discharge of a professional employee on a charge of in-
petency, under the authority of the decision of this Court
Slochower v. Board of Higher Education, 350 U. S. 551.
e court also held that the case was controlled by its deci-
n handed down at the same time in the case of *Board of*
blic Education, School District of Philadelphia v. Intille, Bacon and Atkinson, 401 Pa. 1, — A. 2d —, in which it had
dered reinstatement of three teachers who had been dis-
ssed for refusal to answer the Congressional Committee,
upled with the claim of the privilege of the Fifth Amend-
ent.

This petitioner has also filed a petition for certiorari in
e cases of *Intille, et al.*

REASONS FOR GRANTING THE WRIT.

The decision of the Supreme Court of Pennsylvania in the present case and in *Board of Public Education, School District of Philadelphia v. Intille, et al.*, 401 Pa. 1, — A. 2d —, upon the authority of which the present case was decided, misconstrue the effect of the decision of this Court in *Slochower v. Board of Higher Education of New York City*, 350 U. S. 551 (1956). They are also inconsistent in principle with the decisions of this Court in *Lerner v. Casey*, 357 U. S. 468 (1958), *Beilan v. Board of Public Education, School District of Philadelphia*, 357 U. S. 399 (1958), and *Nelson et al. v. County of Los Angeles*, 362 U. S. 1 (1960).

In the *Slochower* case, this Court reversed the summary dismissal of a teacher in a public college under a New York City Charter provision which made the act of claiming the privilege against self-incrimination operate automatically to discharge the employee without hearing. This Court also said (350 U. S. 558):

> "It was one thing for the City authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or . . . official conduct of city employees'."

The Supreme Court of Pennsylvania relied on this statement in the *Slochower* decision in concluding that it was unlawful for the Board of Public Education to discharge the respondent for failure to answer a federal committee, because the Committee was not charged with the duty of ascertaining the competency of Philadelphia school teachers.

In reaching this conclusion, the court ignored the force of this Court's decision in *Nelson et al. v. County of Los Angeles*, 362 U. S. 1 (1960). In that case this Court upheld

the dismissal of Globe, a civil service employee of Los Angeles County, for refusal to answer the Subcommittee of the Un-American Activities Committee of the House of Representatives, Congress of the United States. The Court specifically considered the contention of the employee that the *Slochower* case barred his dismissal. In distinguishing *Slochower*, this Court said, 362 U. S. 6-8:

> "We, therefore, reach Globe's contention that his summary discharge was nevertheless arbitrary and unreasonable. In this regard he places his reliance on *Slochower v. Board of Education*, 350 U. S. 551 (1956). However, the New York statute under which Slochower was discharged specifically operated 'to discharge every city employee who invokes the Fifth Amendment. In practical effect the questions asked are taken as confessed and made the basis of the discharge.' *Id.* at 558. This 'built-in' inference of guilt, derived solely from a Fifth Amendment claim, we held to be arbitrary and unreasonable. But the test here, rather than being the invocation of any constitutional privilege, is the failure of the employee to answer. California has not predicated discharge on any 'built-in' inference of guilt in its statute, but solely on employee insubordination for failure to give information which we have held that the State has a legitimate interest in securing. See *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716 (1951); *Adler v. Board of Education*, 342 U. S. 485 (1952). Moreover it must be remembered that here—unlike *Slochower*—the Board had specifically ordered its employees to appear and answer.
>
> We conclude that the case is controlled by *Beilan v. Board of Education of Philadelphia*, 357 U. S. 399 (1958), and *Lerner v. Casey*, 357 U. S. 468 (1958). It is not determinative that the interrogation here was by a federal body rather than a state one, as it was in those cases. Globe had been ordered by his employer as well

as by California's law to appear and answer questions before the federal Subcommittee. These mandates made no reference to Fifth Amendment privileges. If Globe had simply refused, without more, to answer the Subcommittee's questions, we think that under the principles of *Beilan* and *Lerner* California could certainly have discharged him. The fact that he chose to place his refusal on a Fifth Amendment claim puts the matter in no different posture, for as in *Lerner, supra*, at 477, California did not employ that claim as the basis for drawing an inference of guilt. Nor do we think that this discharge is vitiated by any deterrent effect that California's law might have had on Globe's exercise of his federal claim of privilege. *The State may nevertheless legitimately predicate discharge on refusal to give information touching on the field of security.* See *Garner and Adler, supra*. Likewise, we cannot say as a matter of due process that the State's choice of securing such information by means of testimony before a federal body can be denied. Finally, we do not believe that California's grounds for discharge constituted an arbitrary classification. See *Lerner, id.*, at 478. We conclude that the order of the County Board was not invalid under the Due Process Clause of the Fourteenth Amendment." (Emphasis added.)

The absence of a specific statute in Pennsylvania directing teachers or other public employees to answer such question of a Congressional Committee does not adequately distinguish the present case from *Nelson, et al. v. County of Los Angeles*. It is patent that the Board of Public Education, as the employer of the respondent was vitally interested in the information which the Congressional Committee was seeking of the respondent in its investigation of the extent of Communist infiltration in the Philadelphia public school system, and which was important to the em-

oyee's fitness. See: *Garner v. Board of Public Works of s Angeles*, 341 U. S. 716 (1951); *Adler v. Board of Edu-ion*, 342 U. S. 485 (1952). No specific statute is required authorize the public employer to obtain information as a teacher's former Communist connections.

Beilan v. Board of Public Education, School District of Philadelphia, 357 U. S. 399 (1958).

In concluding that the Board's dismissal of respondent olated the due process requirement of the Fourteenth nendment, the Supreme Court of Pennsylvania ignored t only the principle of law enunciated by this court in *lson, et al. v. County of Los Angeles*, but also the fact at respondent was dismissed on the basis of a factual owing that her conduct before the Congressional Com-ttee manifested an attitude of "settled contempt, a tant disrespect and an arrogant disregard for a duly nstituted congressional committee and the important nctions it sought to perform", as stated in the dissenting inion of Justice Eagen in the court below (*infra*, pp. a-64a).

The Court ignored these facts, apparently because it ld the view that the *Slochower* case forbade dismissal of employee for refusal to answer a federal committee, gardless of the nature of the conduct or attitude which respondent manifested before the Committee. The jority relied in its opinion on the fact that the respondent d invoked the Constitution of the United States in justi-ation of her stand. Surely, however, an invocation of e Constitution does not prevent inquiry by the public em-oyer into the employee's conduct which accompanied her liance on the Constitution.

It is further submitted that there was no adequate inde-ndent non-federal ground for the decision of the court low. The Pennsylvania Supreme Court also stated in its inion that the refusal of the respondent to answer the estions of the federal Committee did not constitute in-

competency within the meaning of the Pennsylvania School Code. While this may appear superficially to be a non-federal basis for decision, it is apparent on closer examination that this conclusion was not predicated on state law and was not an independent basis of decision. It was inextricably interwoven with the federal constitutional questions which the court below considered at length in holding expressly that the dismissal violated the respondent's constitutional rights. In such cases this Court has clear jurisdiction.

State Tax Commission v. Van Cott, 306 U. S. 511 (1939);
Abie State Bank v. Bryan, 282 U. S. 765, 773 (1931);
Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157, 164 (1917).

The Court's conclusion relating to incompetency rested upon the same interpretation of constitutional law which it made in considering the due process questions raised under the Fourteenth Amendment. The Court assumed, contrary to this Court's decision in *Nelson, et al. v. County of Los Angeles*, that a state employee can not be dismissed for refusal to answer the questions of a federal committee whenever the employee asserts a constitutional right as the basis of refusal to answer. The Court further assumed that when a public employee has refused to answer a Congressional Committee with an assertion of constitutional right, the employer is precluded from considering the improper, disrespectful and defiant behavior of the employee at the time of refusal to answer.

It is pointed out particularly in the dissenting opinions in the Supreme Court of Pennsylvania, that the respondent was dismissed, not for a mere refusal to answer, but for defiant and insolent conduct in refusing to answer.

The question presented is of substantial importance to the states and their cities, school districts and other sub-

divisions. The decision of the Pennsylvania Supreme Court unduly restricts the authority of a public employer over its employees, prevents an employer from taking disciplinary action against employees who refuse to answer questions of legislative committees and inhibits employers in evaluating the fitness of employees to serve and to teach children on the basis of their behavior when called to testify before a Committee of Congress. The decision, if it is not reviewed and reversed, applies the Fourteenth Amendment in a way in which this court has not heretofore approved its application, with drastic effect on the power of states and political subdivisions.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 28, 1960.

APPENDIX A.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

Constitution, Amendment I.

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Constitution, Amendment XIV, Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Pennsylvania Public School Code of 1949, March 10, P. L. 30, art. XI, § 1122, as amended.

> "Causes for termination of contract
>
> The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, . . . persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe: . . ."

APPENDIX B.

OPINIONS BELOW.

Commonwealth of Pennsylvania
DEPARTMENT OF PUBLIC INSTRUCTION
Harrisburg

Appeal of Goldie Watson, a Professional Employe, from a Decision of the Board of Public Education of the School District of the City of Philadelphia, Pennsylvania.	In the Office of the Superintendent of Public Instruction, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania No. 111

January 17, 1955

Opinion

Goldie Watson has appealed her dismissal from employment as a professional employe in the School District of the City of Philadelphia. In accordance with Section 1122 of the Public School Code of 1949, the Act of March 10, 1949, P. L. 30, the Board of Public Education of Philadelphia charged Mrs. Watson with incompetency and persistent and wilful violation of the school laws of the Commonwealth.

For the reasons specified in our opinion in the case of Solomon Haas, (Opinion No. 90, dated November 18, 1954) we hold that the action of the Board of Public Education of the School District of the City of Philadelphia in dismissing Goldie Watson, the appellant, was proper. A copy of the Opinion in the case of Solomon Haas, referred to above, is attached hereto and made a part hereof.

This appeal is therefore dismissed and the following order entered.

Findings of Fact

1. Appellant is a professional employe in the School trict of the City of Philadelphia.

2. On February 17, 1954, appellant was called before sub-committee of the House of Representatives of the ngress of the United States Investigating Un-American ivities, and asked certain questions dealing with her alty to the Government of the United States. Appellant used to answer these questions, invoking the Fifth endment to the Federal Constitution as the basis of her usal.

3. On February 19, 1954, appellant was rated "unsatis-tory" as a professional employe, by Dr. Louis P. Hoyer, perintendent of Schools of Philadelphia.

4. Dr. Louis P. Hoyer, Superintendent of Schools of ladelphia, sent appellant a detailed letter informing her t she was rated "unsatisfactory" as a result of her re-al to answer questions presented by the sub-committee of House of Representatives of the Congress of the United tes Investigating Un-American Activities.

5. On March 9, 1954, the Board of Public Education ferred charges against the appellant on the grounds of mpetency and persistent and wilful violation of the ool laws of this Commonwealth, and after sending her a tement of charges, conducted a hearing in the matter on ne 4, 1954.

6. As a result of such hearing the Board of Public Edu-on determined on June 29, 1954, that the appellant be nissed.

7. From the action of the Board of Public Education appeal was filed with the Superintendent of Public In-uction on July 8, 1954.

8. No additional testimony was taken before the Super-endent of Public Instruction.

CONCLUSIONS OF LAW

1. The notice given to appellant of her unsatisfactory rating was a sufficient compliance with the law.

2. Neither Section 1123 nor Section 1125 of the Public School Code of 1949, as amended, dealing with the matter of rating professional employes, requires that a copy of the actual rating card used in the rating of a professional employe, be forwarded to the professional employe when the rating is made. The official rating card of the Department of Public Instruction is but a guide in determining the rating of a professional employe. The forwarding of a detailed written statement of the unsatisfactory rating was a sufficient compliance with the law.

3. The rating of professional employes, which is the right, the discretion and the duty of superintendents of schools, is not limited to classroom performance.

4. A superintendent of schools is within his legal authority in asking proper questions of professional employes in the employ of his district, which questions relate to the fitness of such employes to continue to serve as teachers in the employ of the school district.

5. The "Pennsylvania Loyalty Act," the Act of December 22, 1951, P. L. 1726, in no way insulates a professional employe from being asked questions as to his loyalty, and said Act is not involved in the present proceeding.

6. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such employe refuses to answer proper questions relating to her loyalty asked of her by the superintendent of schools.

7. The refusal to answer, referred to in conclusion No. 6 herein, constitutes "incompetency."

8. The refusal to answer, referred to in conclusion No. 6 herein, constitutes "persistent and wilful violation of the school laws of this Commonwealth."

9. A superintendent of schools is justified in rating a rofessional employe "unsatisfactory" when such profes- onal employe refuses to answer questions put to her by a ıb-committee of the House of Representatives of the Con- ress of the United States and invokes the Fifth Amend- ent to the Federal Constitution on the ground that truthful ıswers thereto would tend to incriminate her.

ADJUDICATION AND ORDER

And now, this seventeenth day of January, 1955, after aring and argument and after reviewing all the testimony d or taken in the hearing, the appeal of Goldie Watson m a decision of the Board of Public Education of the hool District of the City of Philadelphia, Pennsylvania, ging that the Board of Public Education improperly nissed her as a professional employe, is hereby dismissed l the action of the Board of Public Education is affirmed.

By Francis B. Haas,
Superintendent of Public Instruction.

Commonwealth of Pennsylvania
DEPARTMENT OF PUBLIC INSTRUCTION
Harrisburg

Appeal of Solomon Haas, a Professional Employe, from a Decision of the Board of Public Education of the School District of the City of Philadelphia, Pennsylvania	In the Office of the Superintendent of Public Instruction, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania No. 90

November 18, 1954

OPINION

Solomon Haas has appealed his dismissal from employment as a professional employe in the City of Philadelphia. In accordance with Section 1122 of the Public School Code of 1949, the Act of March 10, 1949, P. L. 30, the Board of Public Education of Philadelphia (hereinafter called the Board), charged Haas with incompetency and persistent and wilful violation of the school laws of the Commonwealth.

The record reveals that on June 26, 1952, appellant, during an interview with Dr. Louis P. Hoyer, Superintendent of Schools, refused to answer certain questions as to his loyalty. Haas stated that he wished to consult counsel. At a second meeting, on October 14, 1952, appellant, having consulted counsel, again refused to answer questions relating to loyalty. He had taken the Loyalty Oath,[1] and his position was that this oath "took care of everything before that time." Appellant further stated that "he did not propose to have here what happened in Germany."

[1] The Act of December 22, 1951, P. L. 1726, 65 P. S. Section 211 et seq.

Thereafter, in November, 1953, a sub-committee of the House Committee on Un-American Activities met in Philadelphia for the purpose of investigating communist activities in that city. Appellant, in response to a subpoena, appeared before the sub-committee on November 18, 1953. He stated that at that time he was not a member of the Communist Party. However, when asked whether he had ever been a member, he refused to answer on the ground of the Fifth Amendment to the Constitution of the United States. The appellant was asked other questions by counsel for the sub-committee, relating to membership in the party and various communist front organizations, as well at attendance at meetings and picket lines. In each instance, Haas invoked the Fifth Amendment.

On the basis of Haas' refusal to answer questions relating to loyalty asked by Dr. Hoyer on June 26, 1952 and October 14, 1952, and his refusal to answer questions dealing with loyalty before the sub-committee upon recommendation by Dr. Hoyer, the Board, on November 25, 1953, preferred the charges against Haas to which reference has heretofore been made. Appellant received a statement of the charges, and on December 19, 1953, he was given a hearing before the Board. Thereafter, the Board found that the charges had been proved and, on January 7, 1954, Solomon Haas was dismissed. This appeal followed.

The important question presented for our determination is whether appellant's refusals, on the three occasions mentioned, to answer questions relating to loyalty, constitute incompetency and persistent and wilful violation of the school laws. This, of course, involves a consideration of the authority of Dr. Hoyer to ask the questions, and the effect of invoking the Fifth Amendment before a sub-committee of the Congress of the United States.

It was settled in Pennsylvania by the case of *Albert Appeal*, 372 Pa. 13 (1952), that a communist or any person who advocates or participates in subversive doctrines cannot teach in the public school system. Mr. Chief Justice

Stern, speaking for the Supreme Court, there said, at page 19:

> ". . . In short, it is essential, in order to protect our children from treacherous influences, that persons who advocate or participate in subversive doctrines should not be employed, or if employed should not be retained, as teachers in our public schools, and any teacher dismissed for such a reason cannot properly claim that any constitutional or legal right is thereby violated."

See also, the Act of December 21, 1951, P. L. 1712, 18 P. S. Section 3811.

To carry out the mandate of Article 10, Section 1 of the Pennsylvania Constitution that there be maintained a "thorough and efficient system of public schools," the appointment of superintendents is provided for in the public school system. The duties of such individuals include the determination of the fitness of the professional employes. See Section 1123 of the Public School Code of 1949, as amended by the Act of August 10, 1951, P. L. 1157, Section 1, 24 P. S. Section 11-1123 (P. P.).

As soon as Dr. Hoyer, as District Superintendent, came into possession of information concerning the loyalty of appellant, it was in our judgment his right, indeed, his solemn duty to inquire of appellant as to the truth or falsity of this information. Because of the important nature of this information, Dr. Hoyer chose to make the necessary inquiry himself. If appellant had cooperated and it was determined the information was false, it would then have been Dr. Hoyer's duty to protect this teacher from false accusation. Appellant, however, refused to cooperate and instead became insubordinate in that "he did not propose to have here what happened in Germany."

The fact that appellant took the Loyalty Oath in no way insulates him from inquiry relative to past conduct. Dr. Hoyer apparently possessed information relating to past

subversive activity or association with subversive organizations by appellant. Assuming that such information was true, and assuming further that appellant's participation in subversive activities continued at least until the day of the oath, it is obvious that the inquiry as to past activity and association is relevant to determine if the activity or association has stopped and, if so, when and under what circumstances.

The Supreme Court of the United States, in a similar situation, has said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. . . ." (Garner v. Board of Public Works of Los Angeles, 341 U. S. 716 (1951))

It has been held repeatedly that the term "incompetency," as used in the Public School Code, is not limited to classroom performance alone: *Horosko v. Mt. Plea. and Twp. School District et al.*, 335 Pa. 369; *Brown's Case*, 151 Pa. Superior Ct. 522; and *West Mahanoy Twp. School Dist. v. Kelly*, 156 Pa. Superior Ct. 601.

It is our opinion that the settled contempt of Solomon Haas for the authority of the Superintendent of Schools seriously reflects upon his qualifications as a teacher. We fully agree with the sentiments of Dr. Hoyer contained in the testimony before the Board of Public Education as a reason for the unsatisfactory rating given to Haas:

> "The question of competency of a teacher has many implications. Of course, there is the question of

his technical skill in handling the work in the classroom. But there are a great many other matters that have to deal with personality, character, that are as important in some respects, I think even more important, than technical skill on the part of a teacher.

"I felt that in this instance Mr. Haas did not show the frankness, the candor, the kind of intellectual honesty that I think a teacher is bound to show in connection with his work. This was true on both occasions when he came into my office.

"The influence of a teacher in the classroom is perhaps greatest through the force of his exam[illegible]e, through the kind of person that he appears to th[illegible]hildren to be. And when we are dealing in an area that is as extensive as the area of a classroom, these matters assume tremendous importance. I therefore feel that a teacher who cannot deal with his professional superior on a basis of candor and frankness has a very serious defect in his qualifications as a teacher and I, therefore, consider him incompetent to be a teacher."

Since the questions which Dr. Hoyer desired to ask appellant related to his loyalty, his position is in accord with that adopted by the Supreme Court of the United States in the case of *Adler v. Board of Education of the City of New York*, 342 U. S. 485, wherein it was said at page 493:

". . . A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, can-

not be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. . From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate."

Under the circumstances, we find that Haas' conduct before the Superintendent on two occasions constitutes incompetency within the meaning of the Public School Code. Cf., *Ambridge Borough School District v. Snyder*, 346 Pa. 103; and *Ganaposki's Case*, 332 Pa. 103.

Appellant has raised the question whether he was given notice of the unsatisfactory rating in compliance with the Tenure Law, in that he did not receive a copy of the rating card.

We interpret Sections 1123 and 1125 of Public School Code of 1949 to require only that a copy of the rating or results of the computation be sent to the employe. A copy of the rating card need not be forwarded to the employe. In this particular case, the detailed letter which Dr. Hoyer sent to the employe, setting forth his reasons for the unsatisfactory rating, was much more informative than would have been a copy of the rating card itself. Since the purpose of the law is obviously to inform the teacher that an unsatisfactory rating has been placed on record against him, the Board of Public Education, in this case, has complied with the rating procedure prescribed by the Code. See *Mulhollen Appeal*, 155 Pa. Superior Ct. 587.

We also sustain the finding of the Board of Public Education that Haas' conduct constituted persistent and wilful violation of the school laws of the Commonwealth.

Appellant clearly indicated that under no circumstances would he answer the questions put to him by Dr. Hoyer either then, or at any future time. Since we firmly believe that the school laws imposed a duty upon appellant to answer these questions, it follows that his repeated refusal to do so constitutes persistent and wilful violation.

Even if the interviews with Dr. Hoyer had never taken place, we believe another and most compelling reason exists for sustaining the dismissal of this employe—his refusal to answer questions propounded by a duly constituted subcommittee of the Congress of the United States.

The astonishing argument is made in appellant's brief that he "by his own violation did not flaunt his conduct before the public." The committee is blamed for appellant's plight in that it called for his testimony in public session and thus caused appellant to refuse to answer. Such an argument is preposterous. The simple facts are that appellant was asked by a lawful body, questions based upon sworn testimony which, if true, seriously reflect upon appellant's responsibilities, not only as a teacher but as a citizen. Appellant refused to answer these questions because a truthful answer thereto might tend to incriminate him. At the hearing before the Board he reaffirmed this position.

No one disputes appellant's right under the United States Constitution to invoke the Fifth Amendment and refuse to testify as to possible communistic affiliations However, when a public school teacher pulls down this cloak of immunity, in our judgment his employer would be most remiss in his obligation to American children and their parents if he did not at once remove such teacher from the classroom. We are not swayed by arguments that no sanction should attach to the teacher who so deports himself. By all the concepts of logic and reason the teacher admits that he has done something for which he might be prosecuted criminally. We repeat, this appellant admitted at the

hearing before the Board that a truthful answer to the committee's question would incriminate him.[2]

It is fundamental that while a person has a constitutional right to refuse to testify, such person does not have a right to public employment as a school teacher, policeman or in any other capacity. An exercise of the right may protect a person from criminal prosecution, but it does not prevent the revocation of a privilege by the State in the exercise of its police power to protect the schools from pollution and thereby to defend its own existence: *Adler v. Board of Education of the City of New York, supra.*

The courts have frequently considered the question of the relationship of the Fifth Amendment to public employment. Justice Holmes once said on this point:

> ". . . The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. . . ." (McAuliffe v. Mayor of the City of New Bedford, 155 Mass. 216, 29 N. E. 517-518).

In *Scholl v. Bell*, 125 Ky. 750, 102 S. W. 248, 261-262, the following very pertinent observations are made:

> "The testimony shows many outrages and crimes done by the police, and yet, when these men were placed

[2] "Mr. Rhoads: Would the stenographer repeat that question. I want no equivocation from you on that, Mr. Haas.

"The question was repeated by the stenographer as follows: And did you, when you took the benefit of the Fifth Amendment on November 18, 1953, before the House Un-American Activities Committee in Philadelphia, believe that if you answered truthfully the questions which were presented to you by that Committee, that your answers would incriminate you?)

"The Witness: The answer is yes. However, I should like to add the following: First, here is a very serious question of the use of the First Amendment, even though I used the Fifth Amendment. There is the right to free association. I don't recall exactly what the amendment is pertaining to the ability to read different types of material so as to make up and formulate a broad picture of a situation which is necessary as a teacher. I believe it is the First Amendment. . . ." (N. T. 82).

on the witness stand and interrogated as to what they knew, they invariably sheltered under the law forbidding self-incrimination; and, when the question as to whether the witness should or should not be compelled to answer was certified to the chancellors, the witnesses were always protected by the ruling. Assuming the ruling to be correct, the conclusion which seems to have been drawn as to the innocence of the officers is not justified. The principle under discussion is a rule of evidence, to protect the witness from criminal prosecution or public exposure to shame because of his own testimony. It is a rule of necessity, beyond which it should not be extended. Its use should not be considered as affording the witness a certificate of good character. Here were police officers being interrogated as to existence of crimes they were paid to prevent, if possible; if not, to expose and punish afterwards, and yet they one and all refused to answer 'under advice of counsel.' Suppose a secret murder had been committed, and the police on that beat, when asked about it, should say, 'I decline to answer for fear of incriminating myself.' This, under the rule invoked, would protect the witness from answering; but how long would it justify his retention on the roll of the police? What would be thought of those who left the public safety in his hands longer than it would require to discharge him? Suppose a bank had been robbed, and the bookkeeper, the teller, and cashier, when interrogated, should say, 'I decline to answer under advice of counsel.' What would be thought of a board of directors who would afterwards leave the bank in the hands of such men? This is precisely the situation here. Peace officers, whose duty it was to prevent and expose crime, when called on to do so, sheltered under the rule against self-incrimination; and yet these men still wear the official uniform, still draw salaries from

the public purse, and this is made possible only by the consent of those who are the apparent beneficiaries of their silence."

The same general proposition of the failure of a public employe to answer questions was considered by the Supreme Court of Pennsylvania, as it applies to policemen, in the case of *Souder v. Philadelphia et al.*, 305 Pa. 1, 156 Atl. 245, wherein a policeman had failed to answer questions. The Court there said at page 6:

". . . It was essential in the proper discharge of his duties that he should comport himself as an officer in such manner that no act of wrongdoing should attach itself to him, to the end that those who served under him should feel for him that respect which insures confidence and obedience. As such an officer in such a station he should have been keen to see that no taint of evil doing attached itself to him and when charges were made, reflecting upon his honesty and integrity, that they were met with denial and answering proofs of no delinquencies. He should have held himself above suspicion. Instead of so doing, when charges of the gravest nature were brought against him by the grand inquest of the county, he answered before them in a way not to establish his freedom from wrong by full explanation, but in a manner calculated to confirm his complicity in crime, and, when summoned by his superior on specific charges before the tribunal charged by the law with the duty of inquiring into them, he answered not at all. This in itself was conduct unbecoming an officer."

In a very recent case, *Faron v. School Committee of Boston*, 120 N. E. 2d 772, the Supreme Court of Massachusetts sustained the dismissal of a teacher upon grounds identical with those here presented. It was there said at page 774:

". . . We do not believe that dismissal of a teacher for pleading self incrimination before a Senate committee when asked about affiliation with the Communist Party can be held by the courts to be arbitrary, irrational, unreasonable, or irrelevant to the task of the school committee. The responsibility for determining grounds for dismissal rests primarily with the school committee and not with the court. Refusal to testify does not prove guilt and no inference of guilt can be drawn from it in a criminal case. In re Opinion of the Justices, 300 Mass. 620, 15 N. E. 2d 662. But the question here is not one of guilt or innocence. **It is a question of administration by a public board in the public interest.** Neither the school committee nor the court exists in a vacuum. Neither can profess ignorance of the currents of opinion which sway great masses of the people. It cannot be doubted that multitudes of people in this community regard with abhorrence the Communist Party and communism as that term is generally understood. It is not for this court to say why this is so or whether this feeling has gone too far or not far enough. It is sufficient for us that the feeling exists. Nothing the court can do or say will prevent the public from drawing its own inferences from refusals to testify. It is apparent that a school teacher has extensive and peculiar opportunity to impress his attitude and views upon pupils in his charge. It was the petitioner's statutory duty to impress upon them 'love of their country.'[3] . . . 'Yet some of the questions which the petitioner declined to answer bore directly upon the recruiting of students for communism. The school committee could find that a great many parents and others would be seriously disturbed if the petitioner were allowed to continue teaching, and that this would undermine public confidence and react unfavorably upon the

[3] Cf., Sections 1511 and 1515 of the Public School Code of 1949, 24 P. S. Sections 15-1511 and 15-1515.

school system. Considering the position of the petitioner entirely apart from any question of fault on his part and as if he had merely suffered some misfortune, such as a terribly disfiguring personal injury, **the best interests of the schools are paramount, and we cannot say that the school committee exceeded its powers.**" (Emphasis supplied)

Much has been written concerning the lack of civic responsibility on the part of a teacher who invokes the Fifth Amendment. See Hook, "The Fifth Amendment—A Moral Issue," New York Times Magazine, November 1, 1953; Reutter, "The School Administrator and Subversive Activities," Columbia University, New York, 1951, but we will confine our comments by quoting from the case of *Intille v. Hoger*, 88 D. & C. 512 (Philadelphia County), which involved a teacher who was suspended for the same reasons as appellant. The court there said at pages 513-515:

"Plaintiff was suspended on the ground that she had shown a lack of fitness to be a teacher in displaying conduct unbecoming her professional status in that she had failed to answer questions which in good conscience she should have been willing to answer candidly as to any affiliation with subversive organizations.

"Since this ground is not enumerated in the section of the statute set forth above, plaintiff concludes that the suspension is improper and therefore merits the intervention of this court.

"But the act does not lend itself to the tortured construction advanced by plaintiff. Because a teacher passes certain qualifying grades, she is not automatically so secure in her position that if she commits some act detrimental to society or to the children placed in her charge, the superintendent of schools is power-

less to dismiss the teacher pending a final hearing by the board of education.

* * * * * * *

"Certainly the refusal of plaintiff to answer questions of a duly constituted committee of our Congress is a dreadful example for a teacher to set for her pupils. Whether plaintiff is a subversive or not, such wretched conduct before a committee of the highest legislative branch of our Republic, can only foster in the impressionable children under her tutelage, a settled contempt and arrogance for our country and its lawmakers."

Appellant's conduct before the sub-committee of the House of Representatives of the Congress of the United States Investigating Un-American Activities, fully justifies the finding of incompetency by the Board of Public Education.

For the foregoing reasons we hold that the action of the Board of Public Education of the School District of the City of Philadelphia, in dismissing appellant was proper. This appeal is therefore dismissed and the following order entered.

FINDINGS OF FACT

1. Appellant is a professional employe in the School District of the City of Philadelphia.

2. Appellant on June 26, 1952, was called for a personal interview by Dr. Louis P. Hoyer, Superintendent of Schools, and informed that Doctor Hoyer wished to ask him some questions having an important bearing on his loyalty. At that time, appellant stated that he refused to answer the questions and wished to seek the advice of legal counsel.

3. On October 14, 1952, appellant was again called before Doctor Hoyer for questioning and stated that upon advice of legal counsel he refused to answer Doctor Hoyer's questions.

4. On November 18, 1953, appellant was called before sub-committee of the House of Representatives of the gress of the United States Investigating Un-American ivities, and asked certain questions dealing with his loy- to the Government of the United States. Appellant used to answer these questions, invoking the Fifth endment to the Federal Constitution as the basis of his usal.

5. On November 20, 1953, appellant was rated "unsat- ctory" as a professional employe, by Dr. Louis P. yer, Superintendent of Schools of Philadelphia.

6. On November 24, 1953, Dr. Louis P. Hoyer, Superin- dent of Schools of Philadelphia, sent appellant a detailed er informing him that he was rated "unsatisfactory" as sult of his refusal to answer questions presented by him by the sub-committee of the House of Representatives the Congress of the United States Investigating Un- erican Activities.

7. On November 25, 1953, the Board of Public Educa- preferred charges against the appellant on the grounds incompetency and persistent and wilful violation of the ool Laws of this Commonwealth, and after sending him tatement of charges, conducted a hearing in the matter December 19, 1953.

8. As a result of such hearing the Board of Public Edu- ion determined on January 7, 1954, that the appellant dismissed.

9. From the action of the Board of Public Education appeal was filed with the Superintendent of Public In- uction on February 4, 1954.

10. No additional testimony was taken before the perintendent of Public Instruction.

Conclusions of Law

1. The notice given to appellant of his unsatisfactory rating was a sufficient compliance with the law.

2. Neither Section 1123 nor Section 1125 of the Public School Code of 1949, as amended, dealing with the matter of rating professional employes, requires that a copy of the actual rating card used in the rating of a professional employe, be forwarded to the professional employe when the rating is made. The official rating card of the Department of Public Instruction is but a guide in determining the rating of a professional employe. The forwarding of a detailed written statement of the unsatisfactory rating was a sufficient compliance with the law.

3. The rating of professional employes, which is the right, the discretion and the duty of superintendents of schools, is not limited to classroom performance.

4. A superintendent of schools is within his legal authority in asking proper questions of professional employes in the employ of his district, which questions relate to the fitness of such employes to continue to serve as teachers in the employ of the school district.

5. The "Pennsylvania Loyalty Act," the Act of December 22, 1951, P. L. 1726, in no way insulates a professional employe from being asked questions as to his loyalty, and said Act is not involved in the present proceeding.

6. A superintendent of schools is justified in rating a professional employe "unsatisfactory" when such employe refuses to answer proper questions relating to his loyalty asked of him by the superintendent of schools.

7. The refusal to answer referred to in conclusion No. 6 herein, constitutes "incompetency."

8. The refusal to answer referred to in conclusion No. 6 ein, constitutes "persistent and wilful violation of the ool laws of this Commonwealth."

9. A superintendent of schools is justified in rating a fessional employe "unsatisfactory" when such pro- ional employe refuses to answer questions put to him a sub-committee of the House of Representatives of the gress of the United States and invokes the Fifth endment to the Federal Constitution on the ground that hful answers thereto would tend to incriminate him.

ADJUDICATION AND ORDER

And now, this eighteenth day of November, 1954, after ing and argument and after reviewing all the testimony or taken in the hearing, the appeal of Solomon Haas a decision of the Board of Public Education of the ool District of the City of Philadelphia, Pennsylvania, ing that the Board of Public Education improperly dis- ed him as a professional employe, is hereby dismissed the action of the Board of Public Education is affirmed.

By Francis B. Haas,
Superintendent of Public Instruction.

IN THE COURT OF COMMON PLEAS NO. 3 IN AND FOR THE COUNTY OF PHILADELPHIA (FIRST JUDICIAL DISTRICT OF PENNSYLVANIA)

BOARD OF PUBLIC EDUCATION SCHOOL DISTRICT OF PHILADELPHIA

v.

GOLDIE WATSON

December Term 1954
No. 8104

PHILIP DORFMAN, ESQ., for Appellant

EDWARD B. SOKEN, ESQ., SIDNEY L. WICKENHAVER, ESQ., and C. BREWSTER RHOADS, ESQ., for Appellee.

Before MILNER, *P. J.*, WATERS, *J.*

OPINION SUR APPEAL FROM SUPERINTENDENT OF PUBLIC INSTRUCTION.

MILNER, *P. J.*

July 29th, 1959.

This is an appeal from the order of the State Superintendent of Public Instruction affirming the action of the Board of Public Education of the School District of Philadelphia dismissing the appellant from her employment as a professional employee. We have this day filed an opinion and order in an appeal from a similar dismissal, in the case of *Board of Public Education v. Sadie T. Atkinson*, December Term 1954, No. 8315. The legal issues involved in this appeal are similar to those involved in the Atkinson appeal. Rather than discuss them again at length, we attach hereto a copy of the opinion filed in that case.

The only factual differences in the two cases stressed by counsel in the oral argument and briefs are that in this case the appellant, in refusing to answer questions put to her by the congressional committee, relied on the First Amendment to the federal Constitution rather than the Fifth Amendment, and the appellant in this case had at an earlier time been interviewed by the Superintendent of Schools and had apparently given him satisfactory answers to questions which he then asked. These facts are not controlling in our view. It is not the reasons given for the refusal to answer, but the refusal itself, the lack of candor and frankness, which gave rise to doubts of the teacher's reliability and competency and impelled her dismissal. Nor would previous knowledge or belief in the mind of the superintendent, based on his experience with the teacher or interviews with her dispel such doubts. The Board of Public Education felt that the mere failure to answer spelled incompetency, regardless of reasons and regardless of past history. In this we think the Board acted properly, as we have already declared in the Atkinson opinion.

ORDER

And Now, to wit, this 29th day of July, 1959, the appeal of Goldie Watson from the order of the State Superintendent of Public Instruction affirming appellant's dismissal by the Board of Public Education is dismissed, and the order of the State Superintendent of Public Instruction is affirmed.

By THE COURT:

Musser, *P. J.*

IN THE COURT OF COMMON PLEAS NO. 3 IN AND FOR THE COUNTY OF PHILADELPHIA (FIRST JUDICIAL DISTRICT OF PENNSYLVANIA)

BOARD OF PUBLIC EDUCATION SCHOOL DISTRICT OF PHILADELPHIA
v.
SADIE T. ATKINSON

December Term 1954
No. 8315

FRANKLIN POUL, ESQ., for Appellant
EDWARD B. SOKEN, ESQ.,
SIDNEY L. WICKENHAVER, ESQ. and
C. BREWSTER RHOADS, ESQ.,
for Appellee

Before MILNER, *P. J.*
WATERS, *J.*

OPINION SUR APPEAL FROM SUPERINTENDENT OF PUBLIC INSTRUCTION.

MILNER, *P. J.*,

July 29th, 1959.

This is an appeal from the order of the Superintendent of Public Instruction of the commonwealth affirming the action of the Board of Public Education in terminating the contract of employment of a professional employee. Sadie T. Atkinson, the appellant, was employed as an elementary teacher at the Barton School, in the School District of Philadelphia. Charges were preferred against her and a hearing was held before the Board of Public Education pursuant to the provisions of the Public School Code, Act of March 10

1949, P. L. 30, section 1127, 24 P. S. 11-1127. After the hearing, which was held on April 9, 1954, the appellant was dismissed from her position on May 10, 1954. On appeal to the Superintendent of Public Instruction, the superintendent, in an adjudication and order filed January 17, 1955, affirmed the dismissal. This appeal followed. Pursuant to section 1132 of the code, 24 P. S. 11-1132, we consider the matter on the record as presented to us, there being no request for a hearing de novo.

The charge preferred against the appellant was incompetency. The evidence presented at the hearing before the Board of Public Education was that on November 17, 1953, the appellant had been called before a sub-committee of the House of Representatives of the Congress of the United States investigating Un-American activities, and, when asked certain questions dealing with her loyalty to the government of the United States, she refused to answer, invoking the Fifth Amendment to the federal Constitution as the basis of her refusal; that on November 20, 1953, the Superintendent of Schools of Philadelphia rated the appellant "unsatisfactory" as a professional employee; that on November 24, 1953, the Superintendent of Schools notified the appellant that she had been rated "unsatisfactory" as a result of her refusal to answer questions put to her by the congressional sub-committee. The appellant presented no evidence at the hearing. Her counsel moved for dismissal of the charges on the grounds that they did not allege conduct constituting incompetency under the Public School Code, and that they violated the federal Constitutional by imposing a penalty on the claim of a federally guaranteed privilege.

The record shows that the appellant, when called before the congressional sub committee, at a hearing held in Philadelphia on November 17, 1953, gave her name and address, stated that she was a first-grade teacher in the Philadelphia school system, by which she had been employed for ten years, and gave a brief resume of her educational back-

ground. She was then asked the following questions by counsel for the sub-committee, and gave the answers here set forth.

"Q. Mrs. Atkinson, have you ever been a member of the Communist Party at any time?

A. I decline to answer on the grounds of possible self-incrimination, based on the Fifth Amendment of the Constitution.

Q. This committee has sworn testimony, Mrs. Atkinson, by witnesses before the committee, under oath, that you have been a member of the United People's Club of the Communist Party, is that correct?

A. I decline to answer on the same grounds.

Q. We also have sworn testimony that your Communist membership book in the year 1945 was Number 86905. Did you have such a Communist Party membership book?

A. I invoke the privileges of the Fifth Amendment on the same grounds."

No other questions were asked of the appellant at the sub-committee hearing. In the hearing before the Board of Education at which the appellant was present and a stenographic transcript of the record before the sub-committee of the House of Representatives investigating Un-American activities, which included the above questions to the appellant and her answers thereto, was introduced in evidence and read in the open hearing, the appellant made no denial of its correctness. In fact, throughout the hearing and in the briefs of her counsel the appellant conceded the correctness of the report of the sub-committee as given above. The Superintendent of Schools testified before the board and explained the basis of his conclusion that the appellant's refusal to answer the sub-committee's questions marked her as incompetent and therefore unfit to continue as a public-school teacher.

Section 1122 of the Public School Code, 24 P. S. 11-1122, as amended, lists the valid causes for which a professional employee's contract may be terminated as immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, and persistent and wilful violation of the school laws. The specific charge in this case was the second of the foregoing, i.e., incompetency.

We note that the opinion of the Superintendent of Public Instruction states that the appellant was charged also with persistent and wilful violation of the school laws of the commonwealth. This appears to be incorrect, as it is the first reference that we find in the record to such a charge. We therefore disregard the charge of persistent and wilful violation of the school laws and confine our consideration to the charge of incompetency, which, if sustained, is sufficient to justify the dismissal.

The issue is two-fold. First: Did the conduct of the appellant in refusing to answer the questions put to her by the committee warrant a finding that she was incompetent? Second: Even if the school authorities were warranted in so finding under the provisions of the Public School Code and the Pennsylvania decisions, were such a finding and the appellant's dismissal precluded by the fact that in refusing to answer the committee's questions she was exercising a right guaranteed her by the federal Constitution? The appellant filed eighteen exceptions to the adjudication of the Superintendent of Public Instruction, but at the argument before the court the foregoing two issues were the only ones touched upon, and appellant's brief deals solely with the federal question involved. We shall, however, notice each of the exceptions filed, for the purpose of disposing of them formally.

Exception No. 1 is without merit. The testimony of the superintendent of schools was competent, to show the action taken by him in respect of the rating given the appellant and to explain his ratiocination in the circumstances and his rea-

sons for reaching the conclusion that he reached on the facts before him. This exception is dismissed.

Exception No. 2 is dismissed: The action of the Board of Public Education was not based on a refusal to answer questions pertaining to religious or political beliefs but on a refusal to answer questions pertaining to activities and associations having to do with what has been judicially declared to be a subversive conspiracy.

Exception No. 3 is based on the erroneous theory that the exclusive procedure available to the board was under the Pennsylvania Loyalty Act. The decision of the Supreme Court in *Board of Education v. Beilan*, 386 Pa. 82 (1956), aff'd 357 U. S. 399 (1958) requires that this exception be dismissed.

Exception No. 6 complains of lack of specificity in the charge preferred against the appellant. Holding as we do that the dismissal was warranted if either of the charges of incompetency or violation of the school laws was supported, and that the evidence supports the finding of incompetency, this exception has no weight and is dismissed.

Exception No. 8 has no merit and is dismissed. The rating of unsatisfactory by the superintendent and the bringing of charges followed forthwith after the action of the appellant which gave rise to them. The appellant's previous rating of satisfactory, before the events which we are considering, was not conclusive.

Exceptions Nos. 10 and 11 must be sustained not necessarily for the reasons given therein, but because no charge was preferred against the appellant of persistent and wilful violation of the school laws of the commonwealth.

Exception No. 13 is not supported by the record. The Superintendent's adjudication made no finding that the appellant's invoking of the Fifth Amendment privilege was evidence of guilt of any crime suggested by the questions asked of her. This exception is dismissed.

Exception No. 17 must be sustained. There is no evidence in the record to support the Superintendent's fourth,

ixth, seventh, and eighth conclusions of law, which refer to efusal to answer questions put by the superintendent of chools. The brief of counsel for the Board of Public ducation explains that these conclusions were included in e Superintendent's adjudication by inadvertence. We gard them as harmless surplusage, if the evidence otherise supports the charge.

Exception No. 18, is dismissed. The record before us cludes a certification by the secretary and business manger of the board that the motion for dismissal of the appellant was adopted on May 10, 1954, by a vote of eleven one. This is a compliance with the requirement of section 1129 of the code, 24 P. S. 11-1129, that the vote be by o-thirds of all the members of the board. There is no quirement in the statute that all those voting must have en present at the hearing. Moreover, the record shows at of the eleven who voted for the motion of dismissal, ten re present at the hearing, though one arrived late.

Of the remaining exceptions, the ninth, twelfth, 14th l 15th have to do with the appellant's contention that, t, the finding of incompetency and, second, the dismissals re unconstitutional because the action on her part which ught them about was one taken by her in the exercise of derally guaranteed privilege. This contention we shall uss later. Presently we shall address ourselves to the priety of the board's finding of incompetency on the evice before it, which is the subject of the appellant's rth, fifth, seventh, and 16th exceptions.

The term "incompetency" as used in the Public School le of Pennsylvania is not confined to the classroom acties of a teacher or to the teacher's educational backund or mastery of the teaching art. A schoolteacher's uence upon her pupils is not limited to what she says does in the schoolroom, and a teacher's right to teach not depend solely upon her conduct in the school. *lan v. School District of Philadelphia*, 178 Pa. Superior 8 (1955), aff'd 388 Pa. 213 (1957). A teacher's incom-

petency may be determined on the basis of her actions entirely outside the classrooms and outside school hours, where her conduct tends to bring her into public disrepute and to forfeit the respect and confidence of the community. *Horosko v. Mt. Pleasant Twp. School District*, 335 Pa. 369 (1939). See also *Brown's Case*, 151 Pa. Superior Ct. 522 (1943); *West Mahanoy Twp. School District v. Kelly*, 156 Pa. Superior Ct. 601 (1944). The refusal of a teacher to answer questions put to him by the school superintendent touching the teacher's past connections with the Communist Party will justify a finding of incompetency and consequent dismissal. *Board of Public Education v. Beilan*, supra. In the Beilan case, as in this case, the allegation of incompetency was based solely on the refusal to answer questions. Beilan refused to answer questions put by his superintendent as well as questions asked by a congressional committee, but, speaking for the majority of the Pennsylvania Supreme Court, Mr. Justice Chidsey found it unnecessary to consider the refusal to answer the congressional committee. The dismissal was upheld solely on Beilan's refusal to give answers to questions put to him by the school superintendent, in interviews which, as Mr. Justice Burton pointed out in the United States Supreme Court's affirming opinion, 357 U. S. 399, "were given no publicity and were attended only by petitioner, his superintendent and the Assistant Solicitor of the Board." In our view, the refusal to answer before the congressional sub-committee was far more serious, both in Beilan's case and in the case of this appellant, attended as it was with publicity which would bring it to the attention of those whose children could be vitally affected.

It was not necessary to draw inferences of guilt from Beilan's refusal to answer. The same is true in Mrs. Atkinson's case. She was not branded incompetent because she was or had been a Communist. She was regarded by her employing board and by her superintendent as unfit to continue as a teacher because of her lack of frankness,

andor, and cooperation; because, in a time of national ress and danger, perhaps the gravest danger that has ever onfronted the nation, she took refuge behind a cloak of ecrecy.

It seems necessary at the very outset to define our attude towards Communism, and what we think is the attiude of the Pennsylvania public. We are against it. We egard others who are against it as our friends and those who favor it as our enemies. Those who will not commit themselves we regard with natural suspicion. While, as Mr. Justice Bell stated in his dissenting opinion in the Beilan case, many influential Americans fail to appreciate the menace of Communism, it is nevertheless true that our Supreme Court has taken judicial notice of the fact that the Communist Party is a subversive organization which conspires to teach and to advocate the overthrow of the government of the United States by force and violence. *Appeal of Albert*, 372 Pa. 13 (1953). There have been many other indications of judicial awareness of the gravity of the Communist threat. It has been held that the term "Communist" is slanderous per se. *Soloski v. Parton*, 383 Pa. 419 (1956). But to our minds the greatest danger stems not from open advocacy of Communist doctrine. With that we can deal on even terms as long as our press remains free and our churches and schools are allowed to inculcate in our youth the principles and doctrines on which this nation was founded and has prospered. The real menace of Communism lies not in its substance but in its method, its secret, slinking, insidious infiltration, in the guise of innocent benevolence, into key positions where most harm can be done, in the schools, in departments of the government, in the entertainment world, and elsewhere.

It is not within the province of the courts to say who shall and who shall not be employed as teachers in the public schools. That function the legislature has entrusted to the constituted school authorities, in its wisdom circumscribing

the power of those authorities by the Public School Code as well for the welfare of public and pupils in the influence to which they may be exposed as for the protection of professional employees in their tenure of office. Our part is to see that the authorities do not abuse the power entrusted to them or exercise it arbitrarily or capriciously. Recognizing the seriousness of the danger to our institutions from the creeping, boring, undermining threat of Communism, we cannot say that a school board is bound to keep on its roster a teacher who, when asked to say which side she is on, refuses to stand up and be counted. To the contrary, we are convinced that the school authorities would be remiss if they did not weed out from the teaching staff all who exhibit the evasiveness, the lack of candor, the peculiar traits of character and personality which prevent some people from openly aligning themselves against the underground forces of subversion, traits which not only arouse natural suspicion in the minds of those entrusted with the administration of our system of education, but bring the teacher who exhibits them into public disrepute as one not possessing the qualifications looked for in a person charged with the instruction of our youth.

We are not alone in this conviction. The courts of other states, from California to Massachusetts, have spoken to like effect. California, in *Board of Education v. Wilkinson*, 270 P. 2d 82, 86 (1954), has said, "In the life-and-death struggle into which our people have been plunged by the monstrous conspiracy called communism, it is becoming more and more apparent that it is essential for the continuance of our national life that we know who is for us and who is against us. This is no time to allow any person who would destroy us, our liberties, our religious convictions, and our government to be employed in any branch of that government, 'to bite the hand that feeds it.' The men and women of America who pay their salaries have a right to know whether or not any of their employees are communists." And similarly Chief Justice Qua, of Massachu-

tts, in *Faxon v. School Committee of Boston*, 120 N. E. 772, 774 (1954): "The school committee could find that a eat many parents and others would be seriously disturbed the petitioner were allowed to continue teaching, and that is would undermine public confidence and react unfavorly upon the school system. Considering the position of e petitioner entirely apart from any question of fault on s part and as if he had merely suffered some misfortune, ch as a terribly disfiguring personal injury, the best interts of the schools are paramount, and we cannot say that e school committee exceeded its powers."

These and many other pronouncements of the state urts put into different words the thoughtful language of r. Justice Minton in *Adler v. Board of Education of the ty of New York*, 342 U. S. 485, 493 (1952): "A teacher orks in a sensitive area in a schoolroom. There he shapes e attitude of young minds towards the society in which ey live. In this, the state has a vital concern. It must reserve the integrity of the schools. That the school auorities have the right and the duty to screen the officials, achers, and employees as to their fitness to maintain the tegrity of the schools as a part of ordered society, cannot doubted. One's associates, past and present, as well as e's conduct, may properly be considered in determining tness and loyalty. From time immemorial, one's reputaon has been determined in part by the company he keeps. the employment of officials and teachers of the school stem, the state may very properly inquire into the comany they keep, and we know of no rule, constitutional or herwise, that prevents the state, when determining the tness and loyalty of such persons, from considering the rganizations and person with whom they associate."

The public as well as the school authorities have the ght to be informed of a public employee's associations and nduct, past and present. This is especially true of one mployed in the delicate and sensitive task of a school

teacher. A teacher who withholds vital information in this regard, whether in response to private interrogation by the constituted authorities or in response to inquiries made by public bodies, forfeits all right to consideration for the position, and if already in service forfeits all right to be continued therein. By her very secretiveness, she brands herself as incompetent.

Appellant's fourth, fifth, seventh and 16th exceptions are therefore dismissed.

Having found the appellant incompetent, in their opinion, what were the Board of Public Education to do? They chose to terminate her contract and dismiss her from her employment as a public-school teacher. Were they acting properly in so doing, or were they violating her constitutional rights because the act which made her incompetent was the exercise on her part of a privilege guaranteed her by the Constitution? In other words, must the school authorities retain the services of a teacher whom they have found incompetent because to dismiss her would attach a penalty to the exercise of her right to refuse to answer because of her fear of self-incrimination? This is the subject of appellant's ninth, twelfth, 14th, and 15th exceptions and is, we think, the real thrust of her argument. She places her reliance on *Slochower v. The Board of Higher Education of New York City*, 350 U. S. 551 (1956), which we shall now examine.

The Slochower case must be read in the light of the earlier Beilan decision and of *Lerner v. Casey*, 357 U. S. 468 (1958), which was announced at the same time as Beilan. Each case has its own peculiar features. Slochower was dismissed from his teaching post in New York without a hearing, pursuant to section 903 of the Charter of the City of New York, which provided that whenever an employee of the city utilized the privilege against self-incrimination to avoid answering a question relating to his official conduct his term or tenure of office or employment should terminate and such office or employment should be vacant, and he

ld not be eligible to election or appointment to any office
mployment under the city or any agency. Under New
law a teacher was entitled to tenure and could not be
arged except for cause and after notice, hearing, and
al. The Court of Appeals of New York interpreted
on 903 to mean that the assertion of the privilege
nst self-incrimination was equivalent to a resignation.
man v. Board of Education, 306 N. Y. 532, 538, 119
2d 373, 377 (1954). The United States Supreme Court
that Slochower's summary dismissal was violative of
process of law: no sinister meaning may be imputed to
xercise of a person's right under the Fifth Amendment,
since section 903 operated automatically to discharge
employee who invoked the Fifth Amendment, the
s action was therefore a conclusive presumption of guilt.
Lerner was dismissed from his job as a subway con-
or in the New York City transit system. He had in-
l the Fifth Amendment when called before the Com-
ioner of Investigation of the City of New York and
ed to answer questions regarding communist affiliation.
United States Supreme Court, in affirming the dismissal,
ted out that the New York Court of Appeals had held
Lerner "had been discharged neither because of any
ence of communist party membership which was drawn
the exercise of the Fifth Amendment privilege nor
use of the assertion of that constitutional protection,
rather because of the doubt created as to his 'reliability'
is refusal to answer a relevant question put by his
oyer, a doubt which the court held justifiable quite in-
ndently of appellant's reasons for his silence. In effect,
dministrative action was interpreted to rest solely on
refusal to respond."

Beilan, a Philadelphia teacher, was rated incompetent
e superintendent of schools and was dismissed after a
ing before the Board of Public Education in which it
ared that he had refused to answer questions regarding
nunist affiliations in an interview with the superintend-

ent and before a congressional committee. The Pennsylvania Supreme Court upheld the dismissal based on the teacher's refusal to answer the superintendent and found it unnecessary to determine the effect of his refusal to answer the committee. The United States Supreme Court affirmed, stating, "The only question before us is whether the Federal Constitution prohibits petitioner's discharge for statutory 'incompetency' based on his refusal to answer the superintendent's questions."

The Slochower case is thus distinguishable from Lerner and Beilan and from the instant case not only in the respect that Slochower was denied due process because he was dismissed without notice and hearing but, more substantively, in the respect of the fundamental reason for the dismissal. Mrs. Atkinson, like Lerner and Beilin, was discharged not for invoking the Fifth Amendment, but for refusing to answer pertinent questions. Her silence, her secrecy, her evasiveness, made her incompetent to teach, in the opinion of her employer. We cannot draw a distinction based on where or to whom the refusal to answer is expressed, provided the inquiry is a pertinent one and made in the course of a legitimate investigation. Beilan's refusal to answer his superintendent, Lerner's refusal to answer the Commissioner, Mrs. Atkinson's refusal to answer the congressional committee, all had the same effect of raising doubt and suspicion of the employee's competency and reliability. Indeed, as we remarked earlier in this opinion, we should regard the refusal to answer the congressional committee in public as more serious than the refusal to answer the employer in private. There can be no doubt that the questions asked of Mrs. Atkinson were within the legitimate scope of the committee's investigation, even though touching her school teaching activities (*Barenblatt v. United States*, June 8, 1959, October Term 1958, No. 35, U. S. Supreme Court); and we cannot fail to recognize the publicity attendant on such proceedings and its effect on the reputation and stand-

ing in the community of one who publicly declines to cooperate in the investigation. In short, the appellant having been found incompetent because of her refusal to answer, quite apart from the reasons prompting her refusal, no question of constitutional privilege was involved in the termination of her employment. The remaining exceptions not already touched upon are therefore dismissed.

ORDER

And Now, to wit, this 29th day of June 1959, the appeal of Sadie T. Akinson from the order of the State Superintendent of Public Instruction affirming appellant's dismissal by the Board of Public Education is dismissed, and the order of the State Superintendent of Public Instruction is affirmed.

By THE COURT,

MILNER, *P. J.*

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

BOARD OF PUBLIC EDUCATION

v.

WATSON,

Appellant.

Argued January 8, 1960. Before JONES, C. J., BELL, MUSMANNO, JONES, COHEN, BOK and EAGEN, JJ.

Appeal, No. 350, Jan. T., 1959, from order of Court of Common Pleas No. 3 of Philadelphia County, Dec. T., 1954, No. 8104, in case of Board of Public Education School District of Philadelphia v. Goldie Watson. Order reversed.

Proceedings on appeal from order of Superintendent of Public Instruction terminating contract of employment.

Opinion filed dismissing appeal, and order entered, opinion by MILNER, P. J. Defendant appealed.

Philip Dorfman, with him *Dorfman, Pechner, Sachs & Dorfman*, for appellant.

C. Brewster Rhoads, with him *Edward B. Soken, Sidney L. Wickenhaver*, and *Montgomery, McCracken, Walker & Rhoads*, for appellee.

OPINION BY MR. CHIEF JUSTICE JONES, June 30, 1960:

The only difference between this case and *Board of Public Education v. Neville, Deacon* and *Atkinson*, p. 1, ante, is that, here, the appellant, Goldie Watson, a Philadelphia

public school teacher, relied upon the constitutional guarantees of the First Amendment, instead of the Fifth, in justification of her refusal to answer certain questions propounded by a Sub-committee (known as the Velde Committee) of the Un-American Activities Committee of the House of Representatives,[1] concerning membership in and association with the Communist Party. Except for the indicated difference in plea in refusing to answer the Committee's inquiries, the material facts of this case are substantially the same as those in the cases of *Iutille, Deacon* and *Atkinson*, cit., supra.

Mrs. Watson became a regular teacher in the Philadelphia public schools in 1931 with tenure, after 1937, under the Public School Code. On February 17, 1954, pursuant to a subpoena, she appeared before the Congressional Committee. She gave the Committee her name, address and a resumé of her educational background and employment record as a teacher. When asked whether she had ever been a member of the Communist Party and similar questions relating to past Communist affiliations on her part, she declined to answer and explained that such questions in her view were "in violation of her constitutional rights and that she particularly relied on the First Amendment." Within *one* day (viz., on February 18, 1954) Dr. Louis P. Hoyer, Superintendent of the Philadelphia Public Schools, re-rated Mrs. Watson "unsatisfactory" as a professional employee of the School District and suspended her from her position as a teacher in an elementary school. Dr. Hoyer sent her a letter informing her that she had been rated "unsatisfactory" as a result of her refusal to answer questions propounded by the Committee. On March 9, 1954, the Board preferred charges of incompetency against Mrs. Watson as a ground for her dismissal on Dr. Hoyer's recommendation.

1. As in the case of *Hubert v. Lehigh Education Ass'n, Iutille, Deacon* and *Atkinson*, p. 1, ante, the term Committee, wherever it appears in this opinion, shall be taken to mean the above identified Sub-committee of the Un-American Activities Committee of the House of Representatives of the United States.

A hearing before the Board of Education on the charges was held on June 4, 1954, at which time a transcript of Mrs. Watson's testimony before the Committee, including the unanswered interrogations made of her, was introduced in evidence. Dr. Hoyer stated at the hearing that he had rated Mrs. Watson "unsatisfactory" on the basis of an official rating card prepared and distributed by the Department of Public Instruction of the Commonwealth and that, as the basis of his re-rating, he had checked three items listed on the card in respect of which he had found her deficient, namely, (1) civic responsibility, (2) judgment, and (3) appreciation and ideals. He testified that in his opinion Mrs. Watson, by refusing to answer questions of the Committee concerning her subscription to subversive doctrines, had exhibited improper civic responsibility, poor judgment and a lack of appreciation and ideals. He also testified, however, that school records showed that Mrs. Watson had been a competent teacher during all of the twenty-three years she had continuously taught in the Philadelphia public schools.

No other evidence to support the charge of incompetency against Mrs. Watson was offered at the hearing. Nor was she asked any questions by the Board or the Superintendent at the hearing until she offered to and did testify. She explained that she had refused to answer questions at the Committee hearing because she felt that the Committee was conducting an inquisition with no legitimate legislative purpose, that the members of the Committee were using the hearings for purposes of personal political aggrandisement, that the Committee had no right to inquire into her associations and beliefs, and that her freedoms of speech and association guaranteed by the First Amendment would be violated if she were compelled to answer the Committee's questions. Both Mrs. Watson and Dr. Hoyer testified that she had spoken frankly to him in his office in October of 1952 concerning her loyalty and her membership in a number of organizations and that, at the conclusion of

the interview, Dr. Hoyer had told her that he was satisfied that she had answered all of his questions satisfactorily.

On June 29, 1954, the Board dismissed Mrs. Watson from her position as a teacher on the charge of incompetency for her failure to answer questions of the Committee. She appealed from the action of the Board to the Superintendent of Public Instruction of the Commonwealth who, on January 17, 1955, dismissed her appeal and affirmed the action of the Board.

Mrs. Watson then appealed to the Court of Common Pleas of Philadelphia County from the Superintendent's order affirming her dismissal. The court dismissed her appeal and affirmed the order of the Superintendent of Public Instruction citing as the basis for its action the reasons set forth in its opinion in *Board of Public Education, School District of Philadelphia v. Atkinson*, Phila. C. P. No. 3, December Term 1954, No. 8315. The reasons so assigned in the *Atkinson* case were (1) that a refusal to answer questions propounded by the Congressional Committee relating to alleged Communist affiliations of the witness renders a teacher "incompetent" within the intent of the Public School Code, and (2) that a discharge on the ground of incompetency for refusal to answer the Committee's questions does not violate a teacher's rights under the Federal Constitution.

So far as the ground assigned for Mrs. Watson's dismissal as a public school teacher and the procedure by which it was effected are concerned, this case is not one bit different from the *Isserman*, *Deacon* and *Atkinson* cases, cit. supra, in which we have this day handed down an opinion sustaining the appellant teachers' contentions and ordering their reinstatement to the positions from which they were suspended and later dismissed.

Even if Mrs. Watson's plea of the First Amendment was not well placed (cf. *Barenblatt v. United States*, 360 U. S. 109), her refusal to answer the Committee's questions did not render her incompetent as a public school teacher.

Just as in the *Intille*, *Deacon* and *Atkinson* cases, here, also, the appellant did not refuse to answer *any* question of her *administrative superior* (Dr. Hoyer) and her employer Board did not ask her any. All that was produced at the hearing before the Board to support the charge of incompetency against the appellant was a transcript of the record of her appearance before the Committee when she refused to answer certain questions on a plea of constitutional right under the First Amendment so to do. If the privilege claimed was not legally available to the witness in the circumstances, that fact would not serve to prove her guilty of the charge of incompetency in her position as a Pennsylvania school teacher with tenure.

If a witness persists in refusing to answer questions of a Congressional Committee on asserted constitutional grounds, which the Committee does not acknowledge as a legal basis for the refusal to answer, a citation for contempt is in order and the witness can be indicted and found guilty of contempt of Congress. But, even that eventuality would not render the witness liable to a State penalty for having refused to answer the Committee's questions on a plea of a constitutional privilege. As matters transpired in Mrs. Watson's case, her plea of the First Amendment would appear to have been properly interposed.[2] But, even if the plea was not validly lodged, the most that could be said of the witness's refusal to answer the Committee's questions was that she acted on a mistaken belief as to what her constitutional rights were under the First Amendment. The record in this case does not furnish the slightest inference, nor does anyone venture to suggest, that Mrs. Watson's plea of the First Amendment was made either in bad faith

2 For her refusal to answer the Congressional Committee's questions imputing past Communist affiliations, Mrs. Watson was indicted for contempt of Congress on five counts (a separate count for each of five unanswered questions relating to Communism). At a trial before a judge without a jury, she was found guilty of the contempt charged and sentenced. On appeal to the United States Court of Appeals for the District of Columbia Circuit, the conviction was reversed on June 18, 1960, and the case remanded *with instructions to dismiss the indictment*.

frivolously. Such being the unquestioned situation, Obviously the State could not draw unfavorable inferences to [her] truthfulness, candor or [her] moral character generally if [her] refusal to answer was based on a belief that the United States Constitution prohibited the type of inquiry which the Committee was making": *Konigsberg v. State Bar of California*, 353 U. S. 252, 270 (1957).

Nor can the witness be faulted for a mistaken belief (if such it was) as to what her constitutional rights were under the First Amendment. Her appearance before the Committee antedated by more than five years the decision of the Supreme Court in *Barenblatt* where it was held (five to four), in circumstances quite similar to the present case, that the First Amendment did not justify Barenblatt's refusal to answer questions of the same Congressional Committee concerning Communism. We have referred to the division in the Court in *Barenblatt* only to stress the fact that, where four of the nine well trained legal minds of the Supreme Court hold to the opinion that the First Amendment justified Barenblatt in his refusal to answer the Committee's questions, surely a person untrained in the law cannot justly be thought to be incompetent for entertaining like opinion and acting upon it.

This case presents, then, the dismissal of the appellant, a teacher with tenure, by the Board of Education solely because she refused to answer certain questions of the Congressional Committee in reliance on asserted constitutional rights. This did not constitute lawful ground for the Board's abrogation of the appellant's contract as a professional employee of the Public School District on a charge of incompetency. As recognized in *Slochower v. Board of Higher Education of New York*, 350 U. S. 549, 558, "It [was] one thing for the City authorities themselves to inquire into Slochower's fitness, but quite another for his discharge to be based entirely on events occurring before a federal committee whose inquiry was announced as not directed at 'the property, affairs, or government of the city, or . . . offi-

cial conduct of city employees.'" Here, likewise, the Congressional Committee was not charged with the duty of ascertaining which, if any, of Philadelphia's school teachers, was incompetent within the meaning of the Pennsylvania Public School Code.

In *Board of Public Education v. Beilan*, 386 Pa. 82, 94, 125 A. 2d 327, which the appellee presently cites, this court squarely based Beilan's dismissal on the ground that he had refused to answer questions of his Superintendent in matters touching his capacity as a teacher. Speaking for the court, Mr. Justice CHIDSEY said, "We are satisfied that his refusal to answer the inquiry of his *administrative superior* constituted incompetency within our definition of that term." (Emphasis supplied.) And, on *certiorari*, the Supreme Court of the United States recognized, in affirming, 357 U. S. 399, 409 (1958), that "The Pennsylvania Supreme Court merely equated refusal to answer *the employing Board's* relevant questions with statutory 'incompetency'." (Emphasis supplied.)

We also hold, in keeping with our decision in *Board of Public Education v. Intille, Deacon and Atkinson*, p. 1, ante, that a teacher's refusal to answer questions touching her loyalty does not constitute "incompetency" within the meaning of that term as used in the Public School Code of 1949 and that any proceeding looking to the dismissal of a teacher with tenure for alleged disloyalty must be brought and proceeded with under the provisions of the Pennsylvania Loyalty Act of December 22, 1951, P. L. 1726 (65 PS § 211 et seq.).

It follows, therefore, that the Board's dismissal of the appellant on the ground of alleged incompetency, which was based alone on her refusal to answer questions of the Committee on a plea of privilege under the First Amendment, deprived her without lawful cause of her right to follow her profession, as a teacher with tenure, in violation of the due process requirement of the Fourteenth Amendment.

Whi'e it is unnecessary for us to pass upon the appel
t's additional contention that the hearing given her by
Board did not comply with the requirements of pro
dural due process, reference to the hearing, and the cur
led manner in which it was conducted, will serve to
point further the important fact, which stands out glar
ly in the record, that the appellant was dismissed solely
ause of her refusal to answer certain questions of the
mmittee in reliance on a constitutional privilege. The
ard's charge against the appellant being incompetency in
capacity as a teacher, she called twelve well qualified
nesses, according to counsel's offers of proof, to testify
her competency as a teacher and to her keen sense of
ic responsibility, sound judgment, and appreciation and
als of citizenship. An objection by counsel for the Board
each of the proffered witnesses was sustained by the
ard on the ground that their testimony would be irrele
t and immaterial to the charge which was based ex
sively on her refusal to answer the Congressional Com
ttee's questions. Whether the excluded testimony of the
nesses offered by the appellant would have been credible
not, it would seem to have been both relevant and ma
ial to her refutation of any appropriate charge of in
petency.

The order of the court below is reversed and the record
anded for further proceedings not inconsistent with this
nion.

DISSENTING OPINION BY MR. JUSTICE MUSMANNO.

My distinguished colleague Justice EAGEN begins his admirable and formidable dissent wtih the phrase: "I emphatically dissent!" If there were a way to emphasize "emphatically", I would do so, for I regard the decision of the Court in this case as a most unfortunate one. It is one to baffle the intellect, confound the law, and set at hazard the scales in which are weighed the civic responsibilities and moral values expected of and required in a school teacher.

If Mrs. Goldie Watson, the teacher involved in this case, had publicly declared that she would not respect the courts of Pennsylvania and the United States, there can be no doubt that this Court would have affirmed any decision of the Philadelphia school authorities which dismissed her as lacking the competence needed to teach children. Equally, if she had declared that she had no respect for the office of the President of the United States, this Court would undoubtedly have agreed that she had proved herself disqualified and incompetent to teach the future citizens of this country. But because Mrs. Watson treated with scorn and contumely the legislative branch of our government, this Court sees no fault in Mrs. Watson which would justify her dismissal. If there is logic in this kind of a distinction, it escapes me.

The Majority says that the only difference between this case and the *Deacon-Intille-Atkinson* case (decision handed down the same day), is that the teachers Deacon, Intille and Atkinson pleaded the Fifth Amendment and Mrs. Watkins pleaded the First Amendment. This is like saying that the only difference between the defenses offered by two men individually charged for murder is that one pleaded he had fired in self-defense and the other said that he killed because he hated his victim.

The difference between the Fifth and the First Amendment is the difference between A and Z. The Fifth Amend

was designed to save one from giving evidence against
lf in a criminal prosecution. The First Amendment
rohibition on Congress against the passage of certain
of legislation. The only thing they have in common
t they are both Amendments. In addition, and con-
to what the Majority says, the facts in this case are
ent from the facts in the *Deacon-Intille-Atkinson* case.
at case the three teachers were asked by the House Un-
ican Activities Committee with regard to their alleged
subversive activities and they refused to answer on the
nd that their answers might incriminate them. This
t held they could not be dismissed from their school
ions for having invoked a Federal right. But in the
nt case the teacher Mrs. Watson did not invoke the
Amendment. She pleaded the First Amendment; and
School Board properly dismissed her. And this Court,
attenuated a reasoning process as I have seen in judi-
opinions, holds that Mrs. Watson could not be dismissed
ay. Why?

The House Un-American Activities Committee was con-
ing an investigation into alleged Communist infiltration
e Philadelphia schools. In the process of this investi-
n, it put a perfectly reasonable question to Mrs. Wat-
Namely: "Did you ever attend a Communist school or
hool for instruction of Communist teachers in New
state?"

Could anything be more relevant? Could anything be
conducive toward obtaining specific information with
rd to the alleged Communist infiltration in the schools
Philadelphia than ascertaining whether school teachers
being instructed on how to teach Communist ideology?
, if the answer to that question would have subjected
Watson to possible criminal prosecution, she would
had the right under the Fifth Amendment to refuse to
ver. Speaking as a member of this Court I do not
ve that such an answer would entitle her to hold her

job, but the Majority held to the contrary in the *Deacon-Atkinson-Intille* cases. However, I repeat and emphasize, Mrs. Watson in this case did not invoke the Fifth Amendment.

The chairman of the sub-committee conducting the hearing even suggested that she could plead the Fifth Amendment, but she declined to accept its protection. She wanted her defiance of the Committee to be complete. She said that the committee had no right whatsoever to ask her questions about her "associations, memberships, conferences, or speeches." It will be noted that here, Mrs. Watson, making use of the well-known trick in debate to ascribe to one's opponent what he has not said and then reply devastatingly to that unspoken accusation, included among the things that the committee could not ask her about, her "conferences or speeches." No one had asked her about her conferences and speeches, nor was there any evident intent that the committee would question her about her conferences and speeches. She was asked about her participation, if any, in a movement committed to destroying the American school system, but Mrs. Watson declined to answer. According to Mrs. Watson's reasoning, she could attend a school of instruction on how to make plans for the assassination of the President of the United States, and she still would be free from inquiry as to whether, as a school teacher, she attended such a school. Counsel for the committee, Mr. Kunzig, asked her a second time: "Have you ever attended any Communist instruction school at any place?" And her answer was: "Mr. Kunzig, I refuse to answer, specifically on the basis of my rights as guaranteed by the First Amendment to the Constitution."

What were her rights under the First Amendment? The Majority avoids the subject entirely. Let us see what the First Amendment says. Here is its precise wording: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the

right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Now, what possible connection can this Amendment have with Mrs. Watson's refusal to reply to a question about attending a Communist school? Absolutely nothing. So far as relevancy is concerned, Mrs. Watson might just as well have cited the Marquis of Queensberry rules.

The Majority makes no attempt to rationalize the propriety of Mrs. Watson's invocation of the First Amendment. It says in effect that it does not matter. It says in effect that Mrs. Watson could do what she pleased. She could reply or not reply as she wished. In other words, the committee had no right to question her at all. Is this law?, And does this kind of a ruling breed respect for authority?

The Supreme Court of the United States said in the case of *Barneblatt v. United States*, 360 U. S. 109, 112: "An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls."

In that case the Supreme Court pointed out that the right of the House Un-American Activities Committee to conduct an inquiry into the subversive antecedents of the teacher Barneblatt was "unassailable." In that case Barneblatt had been asked if he was currently a member of the Communist Party and if he had ever been a member of that organization. He refused to answer and did not plead the Fifth Amendment. He was indicted for contempt of Congress and was convicted. The Supreme Court affirmed the conviction.

Despite this precedent, which is as clear as the sun striking the Capitol dome at high noon, the Majority sees nothing wrong about Mrs. Watson's defying a Congressional committee questioning her on a matter within the indisputable purview of its investigatory powers. The Majority justifies Mrs. Watson's conduct by relating what she said

before the school board. The Majority relates: "She explained that she had refused to answer questions at the committee hearing because she felt that the committee was conducting an inquisition with no legitimate legislative purpose, that the members of the committee were using the hearings for purposes of personal political aggrandizement, that the committee had no right to inquire into her associations and beliefs, and that her freedoms of speech and association guaranteed by the First Amendment would be violated if she were compelled to answer the committee's questions."

Whereas the Majority see justification in this narrated conduct, I see impertinence, effrontery, and insolence. Mrs. Watson's statement was not an explanation of conduct, it was an *attack* on constituted authority. The Supreme Court said, in appraising a similar situation in the *Barneblatt* case: "It goes without saying that the scope of the Committee's authority was for the House, not a witness to determine, subject to the ultimate reviewing responsibility of this Court."

And then the Majority absolutely ignores the strong language of the Supreme Court in that same *Barneblatt* case where it said: "That Congress has wide power to legislate in the field of Communist activity in this Country and *to conduct appropriate investigations* in aid thereof, is hardly debatable . . . In the last analysis *this power rests on the right of self-preservation*, 'the ultimate value of any society.'"

The decision of this Court, if carried to its logical conclusion, would deny the School District of Philadelphia the right of self-preservation, for how can any school system survive if it is required to hire and retain school teachers who are disrespectful of the government in word and deed?

Now, Mrs. Watson was a Communist or she was not a Communist. No one can honestly deny the fairness and accuracy of that statement. Yet, although there was definitely before the Congressional Committee sworn testi-

mony by a Mrs. Dorothy Funn that she had known Mrs. Watson as a member of the Communist Party, Mrs. Watson refused to deny this accusation. In other words, in the face of a direct charge that she belonged to an organization committed to the destruction of our government by force and violence, an organization committed to destruction of the Philadelphia schools, an organization committed to a destruction of faith in a Supreme Being, she refused to deny the accusation.

And her refusal to answer was not based on any theory that she feared criminal prosecution. Her refusal to answer was based on the gargantuan presumption that she was greater than the Congressional Committee and that they did not dare question her about her associations and memberships. Although our government is based upon the proposition that everybody is amenable to the processes of law, Mrs. Watson insisted that Congress itself, representing the law, had no right to question her. And this Court supports her in this unmitigated demonstration of conceit and self-assumed superiority.

Professor Wigmore, in his monumental work on Evidence, has said: "For more than three centuries it has now been recognized as a fundamental maxim that the public (in the words sanctioned by Lord Hardwicke) has a right to every man's evidence . . . This contribution is not to be regarded as a gratuity, or a courtesy, or an illrequited favor. It is a duty, not to be grudged or evaded. *Whoever is impelled to evade or to resent it should retire from the society of organized and civilized communities, and become a hermit.* He who will live by society must let society live by him, when it requires to.

. . .

"From the point of view of society's right to our testimony, it is to be remembered that the demand comes, not from any one person or set of persons, but from the community as a whole,—from justice as an institution, and from law and order as indispensable elements of civilized

life . . . " Wigmore on Evidence, Vol. VIII, Sec. 2192.

A person who witnesses, even involuntarily, the happening of an accident or the commission of a crime and is subpoenaed as a witness to testify as to what he knows of the accident or crime, may not excuse himself from testifying by questioning the motives of the court. He may not be excused from testifying for any reason, except that of possible self-incrimination for crime, which Mrs. Watson excluded from her reasons for not testifying.

As a member of society, a witness has the obligation to tell what he knows for the protection and preservation of that society, and for upholding the concept of justice. He has that duty as much as a passenger aboard a stricken ship is required to aid in seeking to keep her afloat, so as to save the ship and all the passengers, including himself, from sinking.

Mrs. Watson had no more right to refuse to answer the questions put to her by the Congressional Committee than she would have had the right to refuse to testify to an accident she had witnessed. I must repeat that since she did not invoke the Fifth Amendment, her refusal to answer was a demonstration of disobedience to constituted authority, which disobedience, in itself, proved her utterly unworthy and incompetent to be a teacher of the children of Philadelphia, who want instruction on good citizenship, by way of example, from their teachers.

Mrs. Watson's complete destitution of sincerity and utter lack of moral civic responsibility is irrefutably established in the following. She was asked by the chairman of the committee: "Did you take the loyalty oath?"

Defiantly she replied: "I will not answer that question." Now, why wouldn't she answer that question? She either took the loyalty oath or she did not. Her refusal to answer was sheer insolence, nothing else, and, in a court of law, would have subjected her to charges of contempt instanter.

Later on, she conferred with her counsel and then said: "It is a matter of public record that I took the loyalty oath."

And here comes the crucial feature of her insincerity, purposeful irresponsibility, and demonstrated lack of competence to be a school teacher or to hold any office requiring candor, consideration and reliability. The chairman asked her: "Now, at the time you took the loyalty oath were you a member of the Communist Party?" Mrs. Watson replied: "I refuse to answer the question on the basis of the First Amendment."

Now, if Mrs. Watson was a member of the Communist Party when she took the loyalty oath, she committed outright perjury. If she was not a member of the Communist Party when she took the oath, her refusal to answer so simple and so vital a question revealed her as being contemptuous to the ultimate degree. Why shouldn't she answer the question if she was not a member of the Communist Party when she took the Loyalty oath? The Majority Opinion doesn't even mention this conclusive demonstration of Mrs. Watson's brazenry, insolence, and reckless disregard of the most elementary rule of good citizenship. A performance of this kind on the part of a college student could subject him to expulsion. Why, in a school teacher, should it be an invitation to repeat this scandalous demeanor in the presence of young children?

The chairman of the Congressional Committee, evidently amazed at Mrs. Watson's haughty attitude and wishing to make sure that she understood the question, directed her for the second time to answer; and Mrs. Watson, apparently fully resolved to show her defiance to the last breath, again refused to answer.

Could the School Board, learning of this shocking event, give Mrs. Watson a rating of "satisfactory" as a school teacher? Did Mrs. Watson not, by that act of boundless arrogance and conceit, establish herself completely lacking in a sense of civic moral responsibility, so indispensable in the equipment of a teacher?

Did all this not demonstrate her to be incompetent? The rating of competency is not limited to technical qualifica-

tions. Character, moral stamina, wholesome ideals are as much a part of a teacher's equipment as knowledge of the curriculum. This was made clear in our decision in the case of *Horosko v. Mt. Pleasant Township School District*, 335 Pa. 369. I treated the matter of school teacher competency at length in my Dissenting Opinion in the *Deacon-Intille-Atkinson* case, and, by reference, I incorporate that treatment in this present Dissenting Opinion.

Mrs. Watson's behavior was the worst possible example to school children on how to behave. What school children need more than anything else is a demonstration of respect for the law and courtesy toward one's elders and those in responsible authority. They certainly did not get it from Mrs. Watson. What Judge ALESSANDRONI so ably said in another case could well apply to Mrs. Watson, namely: "Whether plaintiff is a subversive or not, such wretched conduct before a committee of the highest legislative branch of our Republic, can only foster in the impressionable children under her tutelage, a settled contempt and arrogance for our country and its lawmakers." (*Intille v. Hoger*, 88 Pa. D. & C. 512, 514-515)

I think it is important to keep in mind, as counsel for the School Board correctly said in his able brief: "The Supreme Court of the United States has not held that refusal to answer questions of a Congressional Committee can never be made the basis for dismissal from state employment."

I think no one would seriously dispute that there are many people who are well educated and technically trained, but who are so lacking in moral sense and so self-centered and overbearing in their conduct that they cannot possibly be assigned to any position where they must deal with other people on the basis of understanding sympathy. There is no position in civilization where the virtues of mutual respect, civic obedience, good judgment, tranquil demeanor and sympathetic understanding are so necessary as in a school teacher's position. How do we determine whether a person

possesses the moral qualifications and sensitive intellectual equipment to make him a good teacher? Obviously this determination can only result from observing that person in his relationship with other people. The school authorities of Philadelphia found, from Mrs. Watson's performance before a Committee of the United States Congress and her attitude before the School Board, that she lacked an appreciation of civic responsibility, good judgment and an awareness of the ideals of this country. I have studied the record and conclude that the Philadelphia School Board did not abuse its discretion in dismissing Mrs. Watson as being incompetent to teach in the Philadelphia schools.

The Majority does not even discuss the question of abuse of discretion. As a matter of fact, and I say this with respect, it is difficult to ascertain from the Majority Opinion just why the Majority concludes that Mrs. Watson has proved herself a good teacher when the School Board, which is charged with the responsibility for that determination, has found exactly to the contrary.

The Majority overlooks that the School Board informed Mrs. Watson in the notice of suspension that: "The reason for your suspension is that you have shown a lack of fitness to be a teacher in that you have displayed *conduct* unbecoming your professional status as a teacher."

Her conduct was not only unbecoming her professional status as a teacher, but in many ways it was indicative of a sympathy with the methods used by Communists in the dissemination of their subversive propaganda. When she appeared before the School Board, she said that investigators of the House Un-American Activities Committee had called on her and she related some of her conversations with them. In that narrative she said: "I told them that I have a rule for twenty-two and a half years, that when a pupil walks to my desk he says I; that nothing would make me cooperate with the Committee."

Whether Mrs. Watson ever attended a Communist school for teachers I have no way of knowing, but she cer-

tainly conducted herself in the manner one could associate with a person who had attended such a school. Here she is revealed, by her own words, that even in the presence of her own pupils she wanted to stand as one who would not co-operate with a Congressional committee. Was this not a statement which showed that she wished her pupils to think disrespectfully of Congress and its Committees? Should further evidence be required of Mrs. Watson's utter unfitness as a school teacher?

Why did she refuse to testify before a Congressional Committee? Listen to her explanation: "And it would have been the lowest type of moral courage and morals for me to have permitted myself to become a stool pigeon and an informer because I had been informed on."

What had she been "informed on"? The evidence in the record is that a Mrs. Dorothy Funn had informed on her as being a member of the Communist Party. The investigators of the Committee told Mrs. Watson that there were three persons who were ready to testify that they had known Mrs. Watson as a Communist. Were these statements verifiable or not? Mrs. Watson did not deny she had been a member of the Communist Party. She was indignant because she had been "*informed on*", and for that reason she said she would not permit herself to become a "stool pigeon." Is this the language of a respectful and respected school teacher? Moreover, being a "stool pigeon" imports an intimate personal knowledge of a criminal enterprise.

In Mrs. Watson's concept of government, testifying before a Congressional Committee makes one a "stool pigeon." No one was asking her to tell lies before the Committee. Thus, if she told the truth, according to her own statement, this would make her a stool pigeon. Did she mean by this statement that she would thus be informing on fellow-Communists?

Mrs. Watson's language of defiance was even stronger than thus far quoted. She said: "When I walked into that room I knew that no power, no power on God's earth could

make one become a part of something that I thought was wrong."

She thought it was so wrong to testify before a Congressional committee that "no power on God's earth" could compel her to do it. And yet, every day hundreds of excellent citizens appear before House and Senate committees to testify on facts, plans, statistics, observations—all to help Congress in formulating legislation for the welfare of the country. Our Government simply could not operate without the information which Congressional committees obtain from witnesses: experts, technical consultants, educators, and so on.

But Mrs. Watson regarded testifying before a committee, required by an Act of Congress to obtain information peculiarly within her knowledge and the obtaining of which would help preserve American freedoms, as something disgraceful. In speaking of her unbridled defiance of the Committee she exclaimed: "Democracy is running down the drain." ! ! !

And this is the kind of person that this Court practically bestows an accolade upon by officially approving her arrogant and disrespectful behavior before a Congressional Committee and her superiors, the School Board of Philadelphia.

I am firmly convinced that a reflective reading of the record in this case will prove conclusively that Mrs. Watson lacks the stability of character, the respect of authority, the clearness of judgment, and the attachment to ideals of American citizenship, to be a good teacher in the American schools. On the basis of her performances before the Congressional Committee and the School Board, the School Board would have been grossly derelict in its responsibilities to the people of Philadelphia if it had not dismissed her. Here is a school teacher who, although supposed to be the very personification of American ideals, defies Congress, insults the School Board, berates democracy, taunts officials

and workers in American government, refuses to give testimony that would help this government to fight its mortal enemy in a war of survival, suggests to her pupils that it is desirable not to cooperate with a branch of the United States Government—does all this in an arrogant, contemptuous, derisive, insolent, rude, scorning manner—and then, six years later, she is restored to the position she has tarnished by her conduct. By that action Congress is rebuffed, the School Board is condemned, the Superintendent of Schools is humiliated, and, in addition, the person responsible for this utterly incredulous situation, may make claim for wages unpaid during the time of her suspension. This is indeed incredulous and baffling to the law, as well as to the taxpayers.

I am in total accord with my brother EAGEN who says: "I emphatically dissent!".

ISSENTING OPINION BY MR. JUSTICE EAGEN.

I emphatically dissent!

I agree with the legal correctness of *Slochower v. The ard of Higher Education of the City of New York*, 350 S. 549 (1956), but the facts herein are not comparable. a school board, because of a provision in a city charter, re compelled to summarily dismiss any employee, who used to testify or answer before a congressional committ-, and was consequently thereby denied the right to exer- its sound discretion with respect to the employee's con- ued employment even though it was determined he or she s completely competent, of course that would be wrong l legally unjustified. That was the Slochower case, but s not the case of Goldie Watson.

An examination of the record (the notice of suspension; statement of charges; the testimony before the members the sub-committee of the House Un-American Activities mmittee; and, the testimony before the Board of Educa- n) clearly discloses that Mrs. Watson was not dismissed ause of her failure to answer questions bearing on her alty, but rather was it because of what she did say and manner in which she said it that justifiably led to the clusion by the Superintendent of Schools that her meanor bordered on insolence and disclosed incompe- cy in unmistakable terms. This is not a case of a school cher suffering dismissal or being declared incompetent rely because she saw fit to exercise her constitutional vileges of refusing to answer. No, this is a situation erein her public employer, after a full hearing, deter- ned that she was unfit to teach in the community because clearly evidenced a settled contempt, a blatant disrespect l an arrogant disregard for a duly constituted congres- nal committee and the important functions it sought to rform.

Let us see how these unfortunate traits of attitude are nifested by the minutes of the sub-committee. She was

asked ten questions. She gave responsive answers to three: Her name, address, and a brief résumé of her schooling and educational background. When asked if she had ever been a member of the Communist Party, she replied: "Mr. Kunzig, I ask your first questions to be completely identified before this committee. I will not answer any other question I am asked about membership in organizations, associations, societies, people I have met with, or anything else." When advised by the sub-committee of her rights under the Fifth Amendment, she declined to invoke it. In reply to the same question asked again, she said: "I said I would not answer the question, and that it is a violation of my Constitutional rights for you to bring me here and attempt to compel me to answer questions about associations, memberships, conferences, or speeches." (Note: "conferences" and "speeches," both volunteered). Not having availed herself of the privilege against self-incrimination, she was directed to answer and she countered: "I refuse to answer on the basis of my first statement." Next question—"Mr. Kunzig: Did you ever attend a Communist school or a school for instruction of Communist teachers in New York State? Mrs. Watson: *Mr. Kunzig, I have intimated that I am not going to answer your questions. . . .*" *When directed to answer, she said: "I will not answer" . . . "I refuse to answer."*[1] These questions and answers are, in the minutes, interspersed with repeated references to the fact that the witness was, during it all, constantly consulting with her counsel. Finally, she "took the First." "Mr. Kunzig: Have you ever attended any Communist instruction school at any place? Mrs. Watson: Mr. Kunzig, I refuse to answer, specifically on the basis of my rights as guaranteed by the First Amendment to the Constitution. . . . I refuse to answer on the basis of the First Amendment." Mr. Kunzig then asked that "the record show that in voice and tone the witness has emphasized the use of the words 'First Amendment.'"

1. Emphasis throughout supplied.

Later in the proceedings she is thusly advised by a com-
ee member: "Mr. Scherer: Of course, I think it is fair
ll the witness—evidently, she already has been told by
counsel—that the manner in which you answered the
stions this morning clearly indicates that you are in
empt of the Congress." After consulting with counsel,
replied: "I have been advised by my counsel of the risks
the dangers that I run by taking this position. I still
the risks and the dangers because this position is very
red to me." Following which, when asked if she had
n the loyalty oath, she said: "I will not answer that
stion." (She later stated that it was a matter of public
ord that she had taken it.)

That's Goldie Watson as she was before the sub-com-
tee in Washington. But she returns to the scene in per-
in answer to the charges of her Superintendent at the
rd hearing. Now she explains, at length, the reasons
t prompted her so to act. Now especially does she
ror traits of attitude toward the sub-committee that lead
leviatingly to the conclusion that she is, as charged, unfit
each in the Commonwealth's public school system. This
he: "Since the inception of the Committee in 1938 under
Chairmanship of Martin Dies, I had been of the opinion
t this wasn't a legislative committee concerned with in-
tigating and then presenting laws; rather that it was an
uisitorial committee and that it was violating the First
endment to the Constitution." Referring to visits made
her before the hearing by committee investigators and
cifically to requests by the latter to identify other people
communists, she said: "I told them that I have a rule for
enty-two and a half years, that when a pupil walks to my
sk he says I; that nothing would make me cooperate with
Committee. *I gave them a breakdown of what I thought*
out the Committee and its violation of all Americans'
hts and its dangers particularly to Negro Americans, and
t under no circumstances would I cooperate with them."
e then says that she "tried to convince" Mr. Fuoss (a

committee worker) "of what real Americanism was. . . . Never has this Committee gone into any community and talked about un-Americanism as it affected Negroes. And therefore to me it wasn't a committee really concerned with un-Americanism; that it was a committee that was an inquisition; and that the individual members of the Committee used the Committee as a political football to gain glory and prestige in America . . . All my life I have dedicated myself to Negro children. I have tried to convince them that this was *a country in which we could have ultimate real freedom.* . . . And it would have been the lowest type of moral courage and morals for me to have permitted myself to become a stool-pigeon and an informer because I had been informed on. I wouldn't do it. I could not have returned to my classroom under those circumstances. So that when I appeared before the Committee that was my other reason. . . . When I walked into that room I knew that no power, no power on God's earth could make me become a part of something that I thought was wrong: could make me show my boys and girls that I held the Constitution in contempt. Because for me to have participated in that inquisitorial investigation, to me, would have been showing that I did not believe in the Constitution. . . . I invoked the First Amendment, but I recognize very clearly the position of those people who invoked the Fifth. . . . And I say to you, gentlemen, that if the First Amendment no longer means anything, if my right to test this Amendment is a crime, we have reached a terrible state in America. *Democracy is running down the drain.* And negro Americans will be able to achieve nothing in such an atmosphere."

This speech, which the board had before it when it deliberated upon Mrs. Watson's fate as a school teacher, is "too much"! At the very least, it is *enough*, in my estimation, to sustain a finding such as was arrived at. The District Superintendent, the Board, the Pennsylvania Superintendent of Public Instruction, the lower court—all are

agreed that Mrs. Watson is "incompetent" within the meaning of Section 1122 of the Public School Code. But the Majority of my colleagues would return her to her job by ordering her reinstatement.

I have stated that the charges against her were based on her behavior, her *conduct* before the committee and that the latter evidenced a contumacious attitude towards its purposes and processes. Her notice of suspension reads in part as follows: ". . . The reason for your suspension is that you have shown a lack of fitness to be a teacher in that you have displayed *conduct* unbecoming your professional status as a teacher." The Statement of Charges declared that: ". . . Her *conduct* before the sub-committee of the House Committee on Un-American activities is incompatible with her status as a professional employe in the Philadelphia public schools. . . . She showed *by her conduct* a lack of professional fitness to be a teacher. *Her conduct* makes her incompetent to continue in the service of the Philadelphia public schools. . . ." Upon cross-examination of the Superintendent of Schools who suspended her and preferred the charges, Mrs. Watson's attorney unsuccessfully attempted to show that her refusal to answer was the sole cause of her dismissal: "BY MR. DORFMAN: Q. Dr. Hoyer, you testified that the only real reason you suspended her was because she refused to answer these questions on February 17; is that correct? A. On the basis of her *appearance* before the Committee *and her action* there, yes. . . . MR. DORFMAN: Q. I just want to narrow it down. This was the only reason; is that correct? A. Her *appearance* before that Committee *and her reaction* to the Committee was the basis for the charges." In answer to an earlier question by Mr. Soken who asked: "Q. Doctor, are there any other respects in which you consider Mrs. Watson's conduct before the Committee as constituting unprofessional conduct?", the Superintendent replied: "Well, *I considered Mrs. Watson's* BEHAVIOR *before the Committee of Congress to border on insolence.* And that also entered into my con-

sideration at the time this decision of mine was made." The basis of the charges, then, encompasses far more than a school teacher's legitimate exercise of a constitutional privilege. She has told the world and the children entrusted to her care what she thought of this sub-committee and has assigned her reasons, which I consider palpably weak, for her refusal to testify. Are those who, under subpoena, go to Washington to testify before duly constituted congressional bodies but who, instead, put on a show of contempt for Congress, are they thereby to become "untouchables"? Due Process? She had it! She received notice of suspension. She was afforded a statement of charges. She was given time to prepare for a public hearing. She appeared at that hearing in person and through counsel. Her attorney exercised the right of cross-examination. She testified, briefly, on direct. She then made a prolonged, uninterrupted statement that covers seven pages in the record before us. She appealed to the Pennsylvania Superintendent of Public Instruction. She appealed from there to the common pleas Court. She was anything but railroaded to her destination of discharge by the board. Her rights were at all times respected.

With the record as my guide, I vehemently regret the reinstatement that is promised.

In conclusion, I would but reiterate that I consider *Slochower v. The Board of Higher Education of The City of New York*, supra, to have 1) been correctly decided but, 2) absolutely no pertinence, relevance or control vis-a-vis the instant case. It is distinguishable on many very important grounds: See *Nelson and Globe v. County of Los Angeles*, U. S. (1960). The City Charter there provided for automatic, summary dismissal. By it a discharge from employment, the conditions existing, was inevitable, made mandatory and, therefore, lacking in an allowance of discretion to the proper supervisory officials and in adequate protective procedures. Again that is not this case.

Mr. Justice BELL joins in this dissenting opinion.